

HISTORY
OF
PROPRIETARY GOVERNMENT
IN
PENNSYLVANIA

BY
WILLIAM ROBERT SHEPHERD, A. M.

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
UNIVERSITY FACULTY OF POLITICAL SCIENCE
COLUMBIA COLLEGE

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MAY, 1896

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INTRODUCTION

THE English colonial governments were of three varieties: first, provincial establishments, the constitutions of which were outlined in the commissions and instructions given by the crown to the governors, and the assemblies of which, held under royal authority, had their share in making ordinances which were local in character and not repugnant to the laws of England; secondly, charter governments, which were in origin and nature civil corporations; thirdly, proprietary governments, which were essentially feudal principalities, upon the grantees of which were bestowed all the inferior regalities and subordinate powers of legislation which formerly belonged to the counts palatine, while provision was also made for the maintenance of sovereignty in the king, and for the realization of the objects of the grant.

From the reign of William I. dates the origin of the great palatine earldoms of England, the overlords of which exercised particular rights known as the *regalia minora*. They were the seignorial lords of the county palatine. From this relation, according to the principles of the feudal system, arose the privileges of mines, wastes, and forests, escheat, forfeiture, wardship, and jurisdiction, both civil and military. More specifically, the *regalia minora* consisted of the right to hold courts of chancery, exchequer, admiralty, wards and liveries, and all varieties of pleas therein; to receive the entire profits of these

courts, to appoint chancellors, justices of the peace, sheriffs, coroners, escheators, and other officers, as the king did for the rest of the realm; to issue writs, precepts, and commissions in their own name, to have a mint and coin money, to levy taxes and subsidies, to grant charters for markets and fairs; to create a palatine nobility, and to hold councils in the nature of parliaments. In short, the counts palatine acted as independent princes, under the limitations of their oaths of homage and fealty to the king. At first established primarily to defend the borders, and, therefore, endowed with special power, they gradually became subject to direct royal control. This fact is evidenced by the statute 27 Henry VIII, chap. 24, which extended the power of the crown over Durham, providing that the king alone should pardon treason and felonies, appoint justices of oyer and terminer, of assize, of the peace, of jail delivery, and that all prerogative and judicial writs should be issued in his name, the form of indictment being changed from "contra pacem episcopi" to "contra pacem regis." Moreover, the crown was to receive all fines and forfeitures for the non-execution or insufficient return of writs and processes, and all officers of the palatinate should be amenable to the laws of the realm. These regulations greatly narrowed the judicial powers of the counts palatine. But the custom of holding councils in Durham continued till the time of Charles II, when burgesses from that county were admitted to parliament.¹

When the territorial and governmental system of Pennsylvania shall have been described, it will appear that that province was a huge fief bestowed on the proprietor by the Crown, and in form was a county palatine. The proprietor may thus be regarded as in possession of all the ancient rights of a count palatine, with the exception of those the exercise of which was otherwise provided for, or was specifically denied.

¹ Surtees, *History of Durham*, i, pp. xvi-lxix; Stubbs, *Constitutional History of England*, ed., 1880, i, p. 308; Sharswood, *Lectures before the Law Academy of Philadelphia*, 1855; Blackstone, *Commentaries*, i, p. 115.

Let us now examine briefly the nature of an English royal charter. An analysis will show that it consisted of the premises, the movent clause, the *habendum* and *tenendum* clauses, the warranty clause, the penal clause, and the datal clause. The first stated the name and title of the grantee, a description of the thing granted, and the reason or consideration for its bestowment. The second, though often included within the first, expressed the reasons for the grant. The third limited and defined the estate granted, and the tenure by which it was held. The warranty clause recapitulated the name of the grantee, the description of the thing, and the service or rent to be rendered. Lastly, the penal clause contained the punishment that would follow any attempt to infringe the privileges granted. More specifically, however, the colonial charters stated the names of the grantees, the territory and tenure, in the case of a corporation the organization of the council and the right to admit new members, the privilege to transport persons and goods, exemption from duties except under certain conditions, the provisions for the appointment of officers and the administering of oaths. Furthermore, provision was made for the organization of subordinate government in the colony, for the exercise of power through ordinance and instruction, the care for general defense and dependence, and the restriction that the laws of the colony should be conformable to reason and to the laws of England. Lastly, the charter should be interpreted in a way most favorable to the grantee.

To this general class of documents belonged the proprietary charter of Pennsylvania. Though issued by a Stuart king, it was drawn in plain and simple terms, agreeably to law and reason and with due regard to the rights of both crown and subject. The control of parliament was also more clearly recognized than in any earlier charter. But this is probably to be explained by the history of Massachusetts. The care taken to guard the supremacy of the home government was due to an anxiety to prevent a repetition of the disputes that had arisen

with that colony. Laws inconsistent with those of England had been passed by its general court. The navigation acts had been disregarded, money had been coined, and an attitude in general assumed, which was inconsistent with the maintenance of imperial control. Hence, to prevent the dangers of misconstruction and design, a requirement was introduced into the charter that the laws of Pennsylvania should be transmitted to England within a specified period. Penn was ordered to employ an agent, because the Massachusetts general court had refused or delayed to appoint any. Finally, provision was made for the free use of the Anglican forms of worship, though that had been made impossible in Massachusetts.¹

If the question, whether or not the Pennsylvania charter was the best example of a proprietary grant, is raised the answer given will depend upon the standpoint from which it is viewed. If we consider only the essential characteristics of a proprietorship as a palatine jurisdiction, the Pennsylvania grant is certainly inferior to that of Maryland and the Carolinas, because the powers bestowed are more definitely limited. But if we examine it from the point of view of a careful supervision of the colonial establishments by the English government, we shall find that, while all the important feudal powers were given to the proprietor, they were so limited as to bring them into subordination to the system of imperial control. In this respect, and with a view to the attainment of this object, the charter of Pennsylvania was superior to those of Maryland and the Carolinas.

After these general observations concerning the charters, it only remains necessary in this introduction to refer briefly to the location of Penn's proposed grant, and the efforts he made to obtain the charter which should transfer it to him. The fact is well known that by the middle of the seventeenth century, the Dutch and Swedes had established small settlements or trading posts near the Delaware River. They remained in

¹ Chalmers, *Political Annals*, pp. 635-640.

possession of the country till 1664, when the region, as a part of New Netherland, was conquered by the English.

The grant to the Duke of York in 1664 did not extend westward beyond the Delaware, though magistrates were appointed under his direction, and exercised jurisdiction especially over the region embraced within the present state of Delaware, known at that time as the "county of New Castle," or later as the "Three Lower Counties on the Delaware." But in 1681, within the territory of Pennsylvania, lived only a few Swedish farmers and traders, with perhaps some Quakers who had drifted over from the Jerseys.¹

As to the origin of the grant of Pennsylvania, it may be said that for several years prior to 1681 Penn had been financially interested in the Jerseys. He had held a large part of the soil of these in trust, and had subsequently become one of their principal proprietors. Still he never viewed these provinces as a sphere in which to make religious and humanitarian experiments, while in fact his pecuniary interest in them gradually dwindled till it became of no practical importance. But the acquaintance with the country, slight though it was, which Penn gained through his connection with the Jerseys, enabled him, when his aspirations sufficiently broadened, to choose Pennsylvania as the field for his "holy experiment." It seems that the crown, for sundry services, owed his father, Admiral Penn, upwards of £16,000. That officer had sought in extinguishment of this debt to obtain a grant of land in America, but, failing in this, at his death he suggested the plan to his son. He immediately set about its execution. Knowing how loath Charles II. was to part with money, he presented a petition, June 1, 1680, outlining the extent of the grant desired in lieu of the debt of £16,000, and mentioning therein only pecuniary reasons.²

¹ *Charter and Laws of the Province of Pennsylvania, 1682-1700*, pp. 416-458.

² Anderson, *History of Trade and Commerce*, iii, p. 76; Hazard, *Annals of Pennsylvania*, pp. 473-4.

Though Charles was very willing to part with that which had cost him nothing, still long deliberations followed the reception of the petition. The committee of the privy council for plantation affairs held several meetings at which the counsellor for the Duke of York and the agents of Lord Baltimore played an important part. At length, March 4, 1680, O. S.,¹ Penn obtained his desire. The charter which he received, was originally drafted by Penn himself from that of Maryland as framed for Lord Baltimore in 1632.² It was revised by Chief Justice North, who probably added the clauses concerning the power of parliament to legislate, and the transmission of colonial laws to England.³ Not only was the charter granted, but a royal letter was sent to the inhabitants, April 2, 1681, commanding due obedience to the proprietary, his heirs and assigns. The Duke of York also executed a quit-claim deed of the region included within Pennsylvania, though legally his jurisdiction did not extend over the new grant.⁴

¹As many of the authorities used in the preparation of this work are in manuscript, I have thought it wise to adhere throughout to the "old style" of reckoning time.

²In one of the rough drafts of the charter of Pennsylvania was a provision that Penn should be given the powers of a bishop of Durham as amply as they had been conferred on Baltimore, and should even be allowed to bestow honors and titles. It is probable that the provision was a suggestion of some of Penn's friends. Penn MSS., *Charters and Frames of Government*.

³Hazard, pp. 476, 486.

⁴*Charter and Laws of Pa.*, p. 466.

PART I

LAND

CHAPTER I

EARLY STIPULATIONS CONCERNING LAND GRANTS

IN order to understand the nature of the land system we must consider those terms of the charter which dealt directly with the grant of territorial powers and possessions, for under and in accordance with the provisions of the charter both the territorial and governmental administration must be organized and managed.

The grant of land embraced all that section of country bounded on the east by the Delaware, from a point twelve miles north of Newcastle to the forty-third degree of north latitude, if the river extended so far; but if not, then by a meridian line drawn from the head of the river to the forty-third degree. The territory granted also extended westward through five degrees of longitude, as computed from the eastern bounds. The region was to be bounded on the north by the beginning of the said forty-third degree, and on the south by a circle drawn twelve miles distant from Newcastle, northward and westward to the beginning of the fortieth degree of north latitude, and by a straight line drawn thence westward to the limit of longitude. The use of the waterways was given, also the soil and its appurtenances, the islands,¹ lakes and

¹ Several attempts were made in petitions to the crown—notably in 1721 from Charles Gookin, a former governor of the province, from Cadwallader Evans in 1755, and from Lord Rochford in 1772—to deprive the Penns of their rights to the islands in the Delaware. The proprietors, in hearings before the Privy Council and the Board of Trade, protested vigorously against these attempts,

rivers, fishing rights, mines and their products, with the exception of one-fifth of all gold and silver ore, which was required as a part of the customary nominal rent.¹

Again, Penn, his heirs and assigns, were constituted true and absolute proprietors, the king reserving to himself and his successors their sovereign rights, as well as their claims to the faith and allegiance of the proprietors and of the future inhabitants of the province. All the premises then should be possessed and enjoyed by the grantee for his own advantage. The tenure was of the king in free and common socage, by

showing that not only were the islands given by charter to William Penn, but that they had long been inhabited and improved by persons under the jurisdiction of Pennsylvania. All such petitions, however, were either withdrawn or rejected. Penn MSS., *Penn Letter Books*—iii, Thomas Penn to West, March 17, 1755; viii, to Peters, July 22, 1765; x, to Richard Penn, April 8 and 14, 1772. Penn MSS., *Philadelphia Land Grants*.

¹ About 1732, soon after the assumption of control by the sons of William Penn, complaint arose that the patents for land reserved to the proprietors three-fifths of the product of the gold and silver mines found therein, though the royal charter reserved only one fifth. The question was, whether or not the products of royal mines regularly passed in a deed to the purchaser of land. The Penns stated that they never did so pass, unless expressly mentioned, because the province had not been accepted from the king in trust for others. Moreover, the reservation of three-fifths of gold and silver was of early origin. But, as was usual, the complainants fixed their attention on what they regarded as an inconvenient diminution of their incomes, without troubling themselves to search diligently for the precedents which would explain it.

In 1732 the Penns ordered that in all patents a proportional part of gold and silver ore should be reserved, a right that had not been mentioned in the earlier documents of that sort. Accordingly, in addition to that reserved to the crown, three-fifths clear of all charges was excepted on royal mines, and one fifth on all others. Lloyd, *Vindication of the Legislative Power*; Logan, *The Antidote in Some Remarks on a Paper of David Lloyd's, Called a "Vindication," etc.*; Penn MSS., *Official Correspondence*—i, J. Logan to S. Clement, May 17, 1722; iii, Thomas Penn to Gov. Thomas, Aug. 20, 1741.

The need of contention over gold and silver mines was slight, but the vast resources of Pennsylvania in other minerals might well have been a cause of disagreement had they been known.

fealty only for all services, and not by knight's service.¹ Besides the payment of one-fifth of all gold and silver ore, already referred to, two beaver skins must be annually delivered at Windsor Castle.

All the said territory, inclusive of the adjoining islands, was then made a province and seigniory, and was named Pennsylvania.²

Penn was empowered to grant the land in such proportions as should seem fit. The grantees were to hold it in their own

¹ The words "not *in capite*," which are used as part of the description of tenure in this and the other colonial charters, seem to express the very reverse of the truth. Tenure *in capite* means a tenure immediately of the crown, and it was thus that Penn and all others who received royal charters held their grants. "Men seem to have been led into a confused way of speaking upon this subject," says Madox (*History of the Exchequer*, i, p. 621), "by supposing tenure *in capite* to have been a distinct kind of tenure, in like manner as tenure by knight's service, socage, and others were. Tenure *in capite* was so far from being a different sort of tenure by itself, that it might be predicated of the several other tenures; that is to say, a man might hold of the king *in capite* either by barony, or by knight's service, or by serjeanty, or by socage, or by fee-ferm. And if it be said that a man held of the king *in capite* without mentioning expressly by what service, it is to be understood that he held of the king immediately, in opposition to his holding immediately of another; and that phrase was used in such case when the service was not in question, but the tenure only, to wit, whether it was mediate or immediate." The statute of 12 Charles II., chap. 24, added to the confusion. Its title was, "An act for the taking away of tenures *in capite*, and by knight's service and purveyance, etc." Its purpose was to abolish tenure by knight service, and other feudal tenures and services. "There are some clauses in that statute," continues Madox, "which, if I do not mistake, are worded in terms so complex and indistinct that, like a two-edged sword, they cut both ways." In fact, the words, "not *in capite*," are repugnant to the words, "to be held of us, our heirs and successors," as stated in the charter. A grant held immediately of the crown was held *in capite*, even though the form of tenure was socage.

² Because the country was known to be mountainous, the proprietor chose for it the name New Wales. The king's secretary, however, who was a Welshman, refused to have it so designated. The proprietor then suggested the name Sylvania, to which the syllable Penn was prefixed in honor of his father. The last change was made without the grantee's consent. Hazard, *Annals of Pa.*, p. 500.

right, not directly of the king but of the proprietor, in fee simple, fee tail, or for a life or lives, or a term of years, and by such services, customs, and rents as might appear to him expedient, the statute of *quia emptores* or others to the contrary notwithstanding. He might erect manors with courts baron and view of frank pledge, though it is stipulated that persons who should receive manors might grant or sell any part of their lands in fee simple or in any other estate of inheritance, to be held of the said manors.

In England the barons or lords who held of the crown frequently granted out to others large portions of their estates, which were also erected into manors. These inferior lords also made grants to third parties, and so on, each subdivision being still capable of becoming a manor. But the superior lords found that by this method of subinfeudation they lost part of their feudal profits. This gave rise to the statute of *quia emptores*, just mentioned, which directed that in all sales or enfeoffments of land the purchaser should hold, not of the immediate grantor, but of the chief lord of the fee of whom the seller himself held. But in order that no subinfeudation should be permitted in Pennsylvania, it was expressly provided in the charter that upon ensuing alienations, the lands should be held of the same lord and his heirs of whom the grantor had held, and by the same rents and services.

From this it appears that the principles of the English land law obtained in Pennsylvania, and would continue to be observed till changed. Purchasers of the soil held immediately of Penn, not of the king, and that by socage tenure. As the title of the proprietary to the soil was in point of law feudal and not allodial, he did not believe himself authorized to make grants upon allodial principles. The estate possessed by the grantee would thus be a tenement, not an allod. It was subject to quit-rent, to forfeiture and to escheat. Pennsylvania then may be viewed as a seignior, but divested of the heaviest burdens imposed by feudal law, and endowed with such pow-

ers of territorial control as distance from the realm of the lord paramount required. Penn, being vested with the absolute proprietorship so far as by charter, independent of Indian purchases, such a right could be conferred, was at liberty to sell and lease lands within the limits of the territory and under the powers granted.

Penn and his sons divided the land, roughly speaking, into three parts. The first comprised the millions of acres called the common land, which was sold generally at uniform prices, and to which, unless otherwise stated, the following discussion of the land system will refer. The second included the proprietary tenths or manors reserved and held by the proprietors jointly, and consisting usually of one-tenth of the choicest lands in a given tract. The third was the private estates of the individual proprietors, either purchased by one of them from the others, or from persons in the province who had previously bought the property in question.¹

Having secured his title to the province, Penn soon after issued his proposals and "Account" of Pennsylvania, together with a statement of the powers necessary for the proper management of the land when granted. The documents stated that these were made public for the benefit of such as were or might be disposed to transport themselves or servants to the new colony. It dealt with the nature and necessity of colonies, the cost of transportation, and the kind of persons most suitable for colonists. It also contained a general description of the country, and a statement of the rights and privileges that settlers might reasonably expect. The conditions of sale were the following. Each share sold was to be called a propriety, and to include 5,000 acres free of Indian incumbrances. The price of each share was fixed at £100; and after 1684 it was liable to a quit-rent of one shilling for every hundred acres. To those who desired to rent land it would be let in estates not exceeding

¹ P. L. B. x, T. P. to John Penn, Aug. 13, 1771; to Hockley, Aug. 22, 1771.

200 acres each, at a quit-rent of one penny per acre. Masters should receive 50 acres per head for each servant brought thither; and 50 acres should be given to each servant when his term of service had expired. As purchasers of still larger tracts were likely to appear, Penn advised that overseers should be sent with the colonists, and that certain allowances for dividends and commons should be made.¹

While yet in England he sold large tracts of land in Pennsylvania to persons who were technically known as "first purchasers." In agreement with them he published certain "Conditions and Concessions." In this document various rules of settlement are laid down, together with directions for building roads and highways, for kindly treatment of the Indians, and for the laying out of a large town or city on the river side, in the most convenient place for health and navigation. To be more specific, it was provided that every one who purchased or leased 500 acres in the province at large, should receive 10 acres in the proposed city, if the space therein would allow it. Purchasers of 1,000 acres or more were not to have over 1,000 acres in any one locality, unless within three years they had settled a family on each thousand acres. Purchasers of 5,000 acres or more might form townships. Moreover, within three years after his land had been surveyed, every man must appropriate and settle it, or, on complaint to the proprietor that the rules of settlement had not been obeyed, new-comers might be given possession. In this case, when the complainant had paid the purchase money, the interest, and the fees for surveying, the proprietor should make him an actual grant of the lands not rightfully settled. Rivers, woods, and all mines save those of gold and silver, whether mentioned in the deed or not, should be enjoyed by the purchaser into whose hands they fell, while special encouragement was given to those who would search for gold and silver mines. Lastly, from every 100,000 acres

¹ *A Brief Account of the Province of Pennsylvania, 1681; Some Account of the Province of Pennsylvania, 1681.*

the proprietor reserved 10,000 acres for himself, on the condition that in each instance they should lie compactly together.¹

In October 1681 three commissioners were appointed to superintend the settlement of the colony. These, with Penn's cousin, Capt. Markham, who had been dispatched a short time previous to take possession, were to act in accordance with instructions, and were to execute the "Conditions and Concessions" on behalf of Penn. They were to lay out the town, and 10,000 acres contiguous thereto for its liberties. They were also to assign the proportions of land to which purchasers were entitled within the town. But if they could not find land bordering on the Delaware in quantities sufficient to allow lots of 100 acres for each purchase of 5,000 acres in the province, they were to get what they could, and assign the lots proportionately, even if only 50 acres in the city were allowed for each propriety. If they found all the land suitable for a city already occupied by Dutch, Swedes, or English, they were to secure from them a release, adding inducements even to the extent of freeing the owners from quit-rent, and urging the weakness of their titles, secured as they were only by grants from the governor of New York.²

They were enjoined also to be honest in buying lands from the Indians, and to guard against any deceit on the part of the savages. They were forbidden to sell any land until the proprietor came in person. Finally, they should survey the country and allow no old patents to stand, but offer to renew them and, where the land had been surveyed, return the survey money.³

¹ Hazard, *Annals of Pa.*, pp. 516-520.

² The Swedes were given 820 acres in the liberties in exchange for the land on which the city of Philadelphia later stood. Reed, *Explanation of the City and Liberties*, Philadelphia, 1774.

³ Hazard, *Annals of Pa.*, p. 527, *et seq.* On his arrival, by an act of assembly passed at Chester, Penn naturalized the foreign-born settlers. He was, of course, desirous of extinguishing titles and claims derived from sources other than himself.

If, as provided in the "Conditions and Concessions," lots to the extent of two per cent. of the total purchases made in the province were granted in the town, it was found that it would cover six or seven thousand acres. As no available site of that area could be found, the commissioner did nothing but explore the country till the arrival of Penn in October, 1682. In fact such a city would have been absurd and impracticable. Therefore, after mature deliberation, the proprietor laid out a town two square miles in extent, and divided it into lots of various sizes.¹ Out of this and the liberties, the first purchasers were to have their two per cent.

It is probable that lots in the city proper were granted by Penn to the first purchasers in order to reconcile them to the shifting of their original city lots into the liberty land. Furthermore, it is likely that the liberty lands were always considered part of the amount purchased, and were taken out of it when the warrant was issued to survey the common land; but city lots were viewed only as appurtenant to the purchase, not as an actual part of it.²

Hence several instances occur in which the commissioners of property confirmed by patent lands the right to which originated in grants and promises made by Sir Edmund Andros and Gov. Nicolls of New York. *Pa. Archives*, 1st Series, i, p. 28.

¹ Dean Prideaux says that the plan followed in the laying out of Philadelphia was based on that of ancient Babylon. *The Old and New Testament Connected*, ed. 1729, vol. i, p. 135.

In 1690 Penn issued proposals for a city on the Susquehanna. He offered shares at £100 each for 3,000 acres, free from Indian claims and without quit rent for five years after settlement. Each purchaser, also, was to have a lot in the city proportionate to his purchase. But the scheme failed. Hazard, *Register of Pa.*, i, p. 400.

² The sons of William Penn believed that the "great town" mentioned in the "Conditions and Concessions," and in the deeds to the first purchasers, was really the liberty land, the lots in the city being an afterthought. Penn's instructions to his three commissioners would indicate this, and, as they claimed, had no reference to the tract which was afterward laid out for the city of Philadelphia. P. L. B. ix, T. P. to Tilghman, Aug. 5, 1767; x, to Fell, March 5, 1770, and to Gaskell, May 14, 1770.

The exact words of the instructions were these: "Lay out 10,000 acres con-

Thus the design of the "Conditions and Concessions" was so far carried out that each purchaser had a town lot proportionate to the extent of his common land, although of a smaller size.

The Schuylkill divided the liberties into two parts, and the lots therein were more or less valuable, according to their location. The liberty lands laid out on the town side of the Schuylkill were in the proportion of 8 acres to a grant of 500 acres. In the warrants for the northern liberties the proportion of 8 acres of liberty land for 492 acres of common land is almost uniform. Those who had warrants for 490 acres of common land were given 10 acres of liberty land lying on the opposite side of the river. Probably the superiority of the land itself was more than a compensation for the one-fifth part taken from the holders of lots in the northern liberties. But when people took up the whole of their grant of the common land, it was presumed that they chose to relinquish the liberty land.¹

There is, however, no record of this plan in existence or of

fitigous to the place," *i. e.*, the site chosen for the city, "as the liberties of the town, and the proportion in the said town is to be thus: every 5,000 acres shall have 100 acres of land *out of that 10,000 acres.*" It is difficult to reconcile this order with the statements in the "Conditions and Concessions," that each purchaser was to have so much land in the city as would be proportionate to the amount he had bought or rented elsewhere in the province; "that the land in the town should be laid out together after the proportion of 10,000 acres of the whole country" to 200 acres, "if the place would bear it;" and that "the proportion of lands in the great town or city shall be after the proportion of 10 acres for every 500 acres purchased, if the place will allow it." Admitting that no site could be found for such a large city, covering 10,000 acres, this does not explain why, in July, 1681, the proprietor should agree to give the first purchasers lots in the city itself proportionate to their purchases of the common land, and in October of the same year, *before any steps had been taken to locate a site*, direct his commissioners to lay out these very lots, not in the city, but in its liberties. At any rate, whatever his design may have been, Penn found it necessary to grant city lots in addition to the concessions of the two per cent. in the liberties, in order that the expectations of the original purchasers might be realized.

¹ P. L. B. ix, T. P. to Tilghman, Feb. 14, 1767.

any alteration of the original agreement, nor any written evidence of the consent of the purchasers to the new arrangement; but quite a long series of acts in the books of the land office would appear to establish it.¹

The original concessions and agreements concerning both the city lots and the common land of course related exclusively to the first purchasers², there being only one case where a person who was not a first purchaser received lots by survey in the city, and he never secured possession.³ Still, when the liberty lands were allotted extraordinary claims based on real and supposed grants from Penn were set up, and continued to be urged with considerable vigor throughout the entire history of the province.

These so called "old rights" of the first purchasers were granted by deeds of lease and release. The lands were not located or surveyed at the time of the grant, but it was presumed that the surveys might be made at a later time. As the deeds were not always recorded, and as the purchases were often made for speculative purposes by persons who never visited the province, titles were frequently defective from the outset.⁴

¹ The commissioners of property stated, in 1712, that they had "no authority to make any variation from the plan of the city of Philadelphia, as it is laid down in the printed draughts and references, that having been the general foundation of the surveys and titles to all or most of the valuable lots in the city from the first location. The purchasers have no right to any lots in the city for any grants or concessions made by the proprietary by his deeds of sale or otherwise in England, those concessions relating only to what are called liberty lands; but only from his grant after his arrival here, which he then concluded should be the established rule." *Pa. Arch.*, 2d series, xix, pp. 351, 528-532, 547-550; P. L. B. ix, T. P. to Tilghman, July 7, 1766.

² *2 Binney's Reports*, pp. 476-486.

³ *Penn, Physick MSS.*, i, J. Willcox to William Penn, Aug. 1, 1701.

⁴ This fact and the desire to provide for his children prompted Penn, in 1705, to direct James Logan, the secretary of the land office, to buy up the claims of descendants of first purchasers and of those to whom their rights had been conveyed. *Penn and Logan Correspondence*, ii, p. 102.

The tracts having been neglected, other persons took them up, as the "Conditions and Concessions" had provided. Then transfers of portions of these were made by warrant to third parties, and orders were again issued to survey lots from such shares for new purchasers. In this way a considerable surplus might be surveyed beyond the amount of the original purchase. By the accumulation of old rights through purchase it happened that with each appropriation of the liberty land entire squares of city lots were bestowed on individuals. Indeed several persons bought up "old rights" and, without duly proving them, caused the city lots appurtenant to be conveyed to themselves, much to the prejudice of the proprietors.

The Penns showed that no person had, by virtue of the "Conditions and Concessions," a right to warrants of survey for lots in Philadelphia, except the first purchasers whose names appeared in the parchment list of August 22, 1682,¹ who drew for their lots,² and who, by the original warrant of survey, within a year should have paid the rent, enclosed their lots and, if possible, erected buildings upon them. Had this been literally carried out, the adjacent proprietary land would have increased to a considerable extent in value.³ Therefore, the proprietors believed that claimants whose predecessors had not in any respect fulfilled their agreements, should not have the lots at all. At any rate, the fact that they had failed to observe the regulations was no reason why the rent should

¹The number of acres bought by the first purchasers in England, according to Hazard (*Annals of Pennsylvania*, p. 576, and App.), was 566,000; according to Reed (*Explanation of the City and Liberties*), 709,535; and according to Physick (*Pa. Cash Accounts*), 860,501. The first estimate was probably the most accurate. There were three lists of the first purchasers, but as only the first two were filed in the land office, the authenticity of the third was questioned by the proprietary officers.

²When the plan of the city was made, large lots were laid out for purchasers of 20,000 acres or less. These were duly numbered in the draught, with a scheme for drawing the names. Map in *Reed's Explanation*, etc.

³P. L. B. ii, T. P. to Logan, Aug. 17, 1743.

not be demanded.¹ Hence orders were sent to the secretary of the land office, that he should allow no lots or lands to be surveyed on account of these "old rights" without warrants regularly issued from his office.² These warrants were to be obtained only in the following way. The persons making application under color of an "old right" had to produce before the secretary William Penn's original deed or patent, the others under which they legally derived title, and the opinion of the attorney-general thereon. They must also pay the arrears of rent from 1682,³ except where early settlement or improvement had been made, which was considered equivalent to a deed.⁴ But the secretary was to pay no attention to heirs or to those who held conveyances from them, provided they had only warrants of survey. For, said the proprietors, warrants of survey showed merely the request of a person who had not executed his part of the agreement concerning both the settlement and the purchase money to be paid later.⁵

All documents offered in support of an "old right" claim had also to be lodged with the secretary, till he and the surveyor general could ascertain whether the land

¹ P. L. B. ii, T. P. to Peters, Aug. 22, 1743.

² *Ibid.* i, Proprietors to Logan, Feb. 15, 1731. The proprietors thought that, unless a warrant therefor had been regularly issued, no person who owned "old rights" could legally locate them wherever he pleased. Those who chose to evade directions sent in conformity with this view were to be ejected, in order that, on appeal from the provincial court, a case testing the validity of the ejectment might be carried to England for trial. *Ibid.*, x, T. P. to John Penn, May 9, 1769.

³ Several instances are given in which persons into whose possession had fallen "old rights" to city lots, surrendered them to the proprietors because the lots, being subject to rents and other conditions, were worth far less than the arrears of rent with which they were encumbered. Penn MSS., *Philadelphia Land Grants*.

⁴ P. L. B., x, Juliana Penn to John Penn, Jan. 10, 1775; to Edmund Physick, Apr. 15, 1775.

⁵ *Ibid.*, ii, T. P. to Peters, Aug. 22, 1743; ix, to Tilghman, Sept. 12, 1766; Penn MSS. *Supplementary Proceedings*, T. P. to Peters, May 4, 1743.

had been previously granted to the person named in them, or to others to whom he had assigned the same. If it had not been so granted, a warrant was issued to survey it in the place where it was originally located, or in some other vacant but not more advantageous spot. When all these regulations had been complied with a patent under the great seal was granted for the land or lot in question. Then an acknowledgment of release, or of receipt of the patent, was signed and registered in the rolls office, while the original deed remained as a voucher in the secretary's office.¹

These regulations of course were very disagreeable to the "old right" claimants. They argued that as the lots were appurtenant to the common lands in the same sense that improvements are appurtenant, the proprietors had no right to impose rents.² They claimed that, if the applicant had deeds of lease and release reciting the "Conditions and Concessions," such should be a sufficient title, because a patent would simply impose a quit-rent. They claimed also that when they came to get patents for their lots, they had to pay for the warrant, the survey, the return, the patent, and its recording, besides being subjected to a variety of other inconveniences. Indeed, they went so far as to doubt whether Penn had any right to reserve for himself any land in the city or liberties.³ But, in spite of this opposition, the procedure, as outlined above, was the one usually followed by the proprietary officers in dealing with the "old rights."

¹ P. L. B., vii, Proprietors to Hamilton, Nov. 13, 1762; ix, T. P. to Tilghman, Sept. 12, 1767, and to John Penn, Jan. 7, 1768.

² A similar assertion had been made by the assembly as early as 1701. *Colonial Records*, ii, pp. 37-39.

³ Reed, *Explanation of the City and Liberties*; Franklin, *Works* (Sparks' Ed.), iii, p. 556.

CHAPTER II

GENERAL PRACTICE OF THE LAND OFFICE

EVEN though the land were disposed of, it would be useless without settlement. Had the colony failed, the grant would have been resumed. Hence both the benevolent attitude of the founder and his private interest obliged him to encourage immigration and the settlement of a part of the land on reasonable terms. Again, it was assuredly necessary to prescribe the way in which persons demanding grants of land should prove their claims. Provision must be made also for locating and surveying the tracts of land as claimed, as well as for authenticating the surveys when returned, and making out titles by grant or patent.

At the outset it must be remembered that, for many years after the settlement of Pennsylvania began, territorial affairs were in great confusion. If the proprietor formed any definite plan for the granting of land, it was found on trial to be impracticable. He did not have a clear idea of the extent of the province or of the difficulties incident to the settling of a wilderness, and to this cause may be traced many of the later disputes and complaints. His failure to make valid his title to the Lower Counties; his absence of fifteen years from the province, between 1684 and 1699; the involved condition of his private affairs, and the failure properly to preserve the records of grants, were inconsistent with any system of territorial administration, however rudimentary. To the loose way in which grants were made may be traced the origin of many of the later disputes, while it opened the way to the commission of many frauds against the proprietor and his sons.

Indeed, the original minutes of property show entries of all kinds of conveyances in abstract, of pedigrees, and to some extent even of intermarriages. As there was but one office of record, often no pains was taken to keep the enrollment of land grants distinct from other public matters, or even from private contracts and business of every description. Hence the territorial administration was the object of complaint through almost the entire proprietary period.

It was not until after the arrival of Thomas Penn, in 1732, that an effort was made to banish confusion from the land office. Under his direction more manors were laid out. Provision was made for collecting a new quit-rent. The price of land was somewhat increased, but large tracts were offered at reduced rates provided a considerable number of people could be induced to settle on them. Certain measures also were adopted to mitigate the evil arising from illegal holdings, and to enforce the speedier payment of rents. But irregularity and confusion had so long prevailed, that improvement came slowly. In some cases the new rules unquestionably worked hardship to individuals, but gradually a harmonious management resulted.

The administration of territorial affairs was regularly entrusted to the officials of the land office.¹ They were the special agents of the proprietor, and consisted of a secretary, who at the same time was secretary of the province, a surveyor general and from three to five commissioners of property. The duties of the commissioners of property were to grant land and guarantee titles. They were presumably subject to Penn's orders, but owing to his unfortunate circumstances, they were often independent of control.

¹ In the earlier years of the province justices of the peace often received applications from persons desiring to take up land, and granted warrants to the surveyor to measure it and make return to the secretary's office. All land formerly granted, and not taken up or settled within the time specified by the justices, was considered vacant. Hazard, *Annals of Pa.*, p. 636.

With reference to the early regulations sent to the commissioners, Penn issued a proclamation, February 24, 1686, commanding that they should ascertain what lands were taken up, what were vacant, and what were most likely to give cause for discouragement to those who were able and willing to settle them. He ordered that all lands not properly seated within six months after the date of the proclamation, should be sold, provided the usual time allowed for the settling of plantations had already expired. But any privileges incident to this course of action should not extend to persons who had forfeited their lands by failure to observe their agreements. Such proceedings, however, seem to have had little effect, for no record appears of the forfeiture or regranting of lands.

The following year he ordered that no warrants of resurvey should be granted for land within five miles of any navigable river, and that, as the settlement of the adjoining territory would make it valuable, all land which by resurvey was found to be in excess of the amount purchased, should be reserved for himself. In this connection he also directed that no lands should be laid out adjoining any which were already inhabited, and that one-tenth of every township, and all the "Indian fields" therein should be reserved to himself.¹ At the same time he ordered the commissioners to grant no mines without his express warrant, and to forbid the felling of timber in his manors.² The regulations issued by his sons to their officers will be noticed as we proceed in the discussion of the land system.

¹ It was a common practice with the proprietors to order their officers to survey for new settlers lands which did not adjoin those already purchased or which were under cultivation. Similarly they directed their officers to leave in Philadelphia and other towns vacant lots lying between those already disposed of, in order that the land thus reserved might become more valuable by reason of the adjacent settlements. Such orders, however, were generally kept secret. P. L. B., iv, T. P. to Peters, Jan. 10, 1756.

² Huston, *Original Titles to Land in the Province and State of Pennsylvania*, p. 68 *et seq.*

But, as usual, the directions issued by William Penn were soon disobeyed. This fact occasioned the existence of many imperfect rights and claims to land. Moreover, since their task was a thankless one, and their remuneration very small and uncertain, the commissioners were occasionally unwilling to act. They had besides to encounter the opposition of political faction, which grew apace as the influence of the proprietor waned.

Associated with the commissioners were the keeper of the great seal, and the master of the rolls. The former, as the name implies, was in charge of the great seal of the province, and affixed it to patents, commissions, and other important public documents. The duties of the latter were mainly to enroll the provincial laws and to preserve public records. During the early history of the province the duties of these officers were occasionally performed by the commissioners themselves, but after 1746 the keeper of the great seal was regularly the receiver general.¹ The commissioners also acted as receivers of the proprietary revenue until 1689, when the office of receiver general was formally instituted,² and from time to time as the population increased and the proprietary interests became more extensive, deputy receivers were appointed in the different counties.

After John, Thomas, and Richard Penn had entered upon their proprietorship, in 1732, the duties of the commissioners were entrusted to John and Thomas. But, upon the return of Thomas Penn to England in 1741, none of the proprietors were in the province till 1771. The governor, George Thomas, however, in 1741, received two commissions, and from this time on the practice of granting such to each governor continued. In the governmental commission proper the governor was regularly forbidden to interfere with the management of the land system, except so far as the use of his official

¹ *Annual Report of the Secretary of Internal Affairs*, 1890.

² *Ibid.*, *Col. Rec.*, i, p. 313.

position could aid the proprietary officers in the performance of their duties. But in the territorial commission he was empowered by warrants issued by the secretary under the seal of the land office, to grant vacant lands and lots claimed under William Penn or the "young proprietors," according to the original terms of such purchases, and on condition that all arrears of rent and purchase money were duly paid to the receiver general. Furthermore, he was instructed to grant by similar warrants the common land on the terms in existence at the time of the commission, and under certain regulations to grant escheated lands as well, special attention being paid to the requirement that all rents reserved should be in sterling or its value according to the rate of exchange. After having received certificates of survey from the surveyor general, and of payment from the receiver general, he was authorized to grant patents under the great seal containing the reservation previously mentioned. These were to be recorded in the office of the recorder of deeds at Philadelphia. Lastly, he was ordered to grant licenses for ferries for seven years, to appoint and remove officials of the land office, and to exercise a general supervision over territorial affairs. The proprietors on their part promised to ratify his proceedings.¹

In 1741 also special agents were appointed by the Penns to manage their manors and private estates. In 1765 a board of property was constituted, and to it was entrusted the administration of territorial affairs.² It consisted of the governor, who was given the power of decision when projects injurious to the

¹ *MS. Commission Book B.; Pa. Arch.*, 1st Series, i, p. 625. Some evidence appears that as early as 1702 or 1704 the governors were given certain powers in territorial matters, subject to confirmation by Penn himself. It is probable, however, that this was discontinued after 1708. *Penn and Logan Corresp.*, ii, p. 185.

² Private applications to the proprietors concerning land were invariably referred to the officials in Pennsylvania, the Penns refusing to be considered in the light of mere landlords. *Penn MSS., Supp. Proc.*, T. P. to Peters, May 9, 1761; P. L. B., viii, to W. Smith, March 8, 1765.

proprieters were broached, the secretary, the surveyor general, the receiver general, and, in 1769, the auditor general.¹

Having thus indicated the duties of the managers of the land office, we are now prepared to consider warrants and patents. The method adopted by the proprietor for granting lands while in England was by deeds of lease and release, or of bargain and sale, executed by Penn or his steward, and the purchaser; but he made it a general principle to give no deed for lands sold until the purchase money was paid.² As we have already remarked, no particular locality to be surveyed was designated in these deeds, as that could be determined when the territory had been explored. But in each deed or conveyance was a clause obliging the grantee to have it duly registered in the public record office of the province. As near as can be ascertained, then, the early procedure did not differ much from the following: The secretary's office having been opened at Philadelphia, persons desirous of securing land went there to procure entry on record of their respective claims, these being based on the "Conditions and Concessions," or on special grants from the proprietor; but not infrequently applications were made without reference to any particular grant or regulation. At the same or at a subsequent time they demanded warrants of survey for the corresponding quantities of land, which were issued by the secretary, subject to the direction of the commissioners. These warrants issued under the lesser seal were directed to the surveyor general, who, after their execution by himself or deputies, and after the fees for surveying had been paid, returned certificates of the surveys to the secretary's office, and registered them in his own office as well.³ Then patents conformable thereto were issued under

¹ P. L. B., viii, T. P. to Peters, Sept. 20, 1765; ix, to Physick, Feb. 6, 1768; x, to Hockley, July 4, 1769, and Feb. 26, 1770.

² *Pa. Magazine of History*, x, p. 189 *et seq.*

³ It was the practice of the commissioners of property from 1708 to 1732 to accept the first return of a survey, if a patent was required, without demanding that

the great seal by the commissioners of property, when the necessary payments had been made.

Owing to the fact that the various documents and regulations did not always specify the location of the grant, several warrants might issue for tracts adjoining each other, or at some distance apart. Such warrants, however, differed from warrants to take up land, as these were for portions of a tract already surveyed, and founded on deeds which had already been paid for. It was often the case that an applicant for a warrant insisted upon land the location of which he had chosen, in spite of any regulations concerning townships, and refused to pay the deputy surveyor unless his wishes were followed. But as a general rule the applicants for warrants merely stated the number of acres desired, and before long was instituted the practice of designating the land as adjoining a body of water, or the property of a particular settler,¹ and as subject to settlement within a specified time.

We can thus see that, especially in early times, the warrants were by no means uniform in their language and specifications. They were usually divided into two parts, the first of which contained the motive or reason for their being demanded and described the object upon which they were to operate, while the other part directed the execution of what was desired under certain conditions and restrictions. Not infrequently the first part of warrants involving resurveys² was allowed to contain any special statements which the parties thought proper to

the warrant should be first entered in the surveyor general's office, and a formal return sent from it to the secretary's office. Hazard, *Register of Pa.*, xii, p. 362.

¹ Warrants in the land office at Harrisburg.

² The early grants were supposed to have contained a large amount of land in excess of what was expressed in the deed, or what the possessor by the original warrant of survey had a right to expect. Hence a method of granting warrants of resurvey was speedily adopted, and after the excess had been deducted, of confirming, by a new patent, the quantity as purchased. This eventually failed, for in some cases too much land was included, while in others mistakes and want of skill on the part of the surveyors caused widespread dissatisfaction.

set forth, and those to which expression had previously been given in their application. Sometimes they contained matters mentioned in the Indian deeds. Occasionally they stipulated the quit-rent, and the amount of purchase money which was either to be paid down or paid at some future time with interest. Sometimes they mentioned allowances for improvements. They often required that a patent should be taken out at a specified time, or stated that the performance of certain agreements was indispensable to their validity.¹ But what were known as "special warrants," were warrants which vacated rights to land and transferred them to other parties, because such agreements had not been complied with. Gradually, however, a set form of warrants was introduced. Notably in the warrants of Thomas Penn the new clause appeared providing for the payment of a year's rent at every alienation.² But it is doubtful if this was ever conscientiously put into execution, and the clause eventually was dropped. Later in the history of the province, moreover, the

¹ The early warrants ran generally as follows :

Pennsylvania, ss.:

By the Commissioners of Property :

At the request of ——— that we would grant him to take up ——— of land, ——— for which he agrees to pay to the proprietary's use ———, and the usual yearly quit-rent of ———, for each 100 acres. These are to authorize and require thee to survey, or cause to be surveyed, unto the said ———, in the place aforesaid, according to the method of townships appointed, the said quantity of ———, that has not been already surveyed nor appropriated, nor is seated by the Indians, he seating and improving the same within ——— after the date of survey, and make a return thereof unto the secretary's office, which survey, in case the said ——— first fulfills the above agreement, upon location shall be valid, otherwise the same is to be void as if it had never been made, nor this warrant ever been granted.

Given, etc., at Philadelphia, ———.

Commissioners' Names.

To ———, Surveyor General.

Warrants in the land office at Harrisburg.

² William Penn had pursued a similar method in the Lower Counties. P. L. B., ix, T. P. to Tilghman, Nov. 7, 1766.

practice followed by the land officers of sending merely a written order to a deputy surveyor to survey land was forbidden and all warrants were ordered to be issued in a regular manner.¹

In regard to the prices of the common land, they were sometimes expressed in the earlier warrants, but as a rule they were contained only in the patents. A portion of the purchase money, however, was usually paid, or secured by a mortgage² at the time of taking out the warrant.³ But in some cases patents were granted and short term bonds and mortgages taken for part of the price.⁴ Before 1713 £5 per 100 acres, and one shilling quit-rent, was the general rate. This was speedily changed to £10 per 100 acres. In the warrants issued under the trustees subsequent to 1719 the terms were £10 per 100 acres and 2 shillings quit-rent. For a number of years after 1732⁵ £15, 10 sh. currency was the regular price per 100 acres, with a quit-rent of a half penny sterling per acre, but after 1765 this was reduced⁶ to about £5 sterling per 100 acres,

¹ P. L. B., vii, T. P. to Hamilton, April 25, 1762.

² Because no court of chancery existed in the province, money due on warrants, if put in the shape of a mortgage, could be more readily recovered by suit, as mortgages were a security well known in law, while warrants and surveys were not. *Ibid.*, viii, T. P. to Physick, Sept. 22, 1765.

³ This was true more especially with regard to the region comprised in a large purchase from the Indians in 1768. *Ibid.*, x, T. P. to Tilghman, Feb. 26, 1770.

⁴ Huston, *Original Titles*, etc., p. 105.

⁵ In 1735, because the needs of the proprietors forced them to resort to extraordinary expedients for the raising of money, the scheme of selling lands by a lottery was adopted. It was believed that such a scheme would secure titles at an easy rate to persons who had settled upon lands to which they had no right, and would thereby increase careful cultivation. 100,000 acres were to be laid out anywhere in the province, except in manors or in lands already surveyed or actually settled and improved before 1735, the quit-rent being one shilling sterling per 100 acres. Many tickets in this lottery were sold, which became titles to land in spite of the fact that the subscribers never drew for their lots. The property surveyed in connection with this was for a long time kept separate from the common mass. Indeed, as late as 1770 there were warrants of acceptance for part of these lottery lands on special terms. Smith, *Laws of Pa.*, ii, pp. 149, 150.

⁶ The high rates caused an emigration to other colonies, chiefly Virginia and

with a quit-rent of one penny sterling per acre.' What was called surplus land, however, *i. e.*, land which had been found on resurvey to be in excess of the amount intended to be granted and which often had been improved, was sold at considerably higher rates.

Hence the procedure of the land office in issuing warrants and patents may be summed up as follows: First, there was an official, usually the secretary, authorized under restrictions and regulations to issue warrants of survey. Second in order were claims, directions, or other legal causes shown to this officer for the issue of such warrants, and consisting of rights, general or special, substantiated in required forms and recognized by their admission on record. Then came the warrant itself, which was an authoritative order issued under the lesser seal of the province to the surveyor general, and by him transmitted to his deputy, directing him to lay out and survey for the party therein named a certain quantity of land, and to return a certificate of his survey to the secretary's office. The warrants and surveys could be registered, but the settler had no power of assigning a warrant, for no grant had been made to him, but only the promise of a grant when certain conditions mentioned in the warrant had been fulfilled. Moreover the warrants were presumed to hold good only for a brief period, with the understanding that the warrantee was speedily to pay the pur-

the Carolinas, which was accompanied with considerable financial loss to the colony, as the emigrants converted their effects into money and carried it with them. For this reason the proprietors had been making gradual reductions ever since 1751. Penn MSS., *Supp. Proc.*, John Penn to Peters, Sept. 28, 1751.

¹ Since about the middle of the eighteenth century, it had been the practice for the deputy surveyor to be ordered to survey a tract of land; and perhaps several years later a warrant was issued for the return of the survey. Hence, on the plea that it had been surveyed before the new terms were inaugurated land might be bought on the old terms. The practice continued, but the proprietors doubted its expediency even in the case where it guaranteed the possession of the land to persons who had settled and made improvements thereon. P. L. B. viii, T. B. to John Penn., Oct. 28, 1763, July 6, 1765.

chase money and take out his patent.¹ Fourth in order was the certificate so returned, and lastly, the patent or grant. This was a public deed from the proprietors issued under the the great seal and conveying to the grantee their rights in the land, describing its bounds, and giving the complete legal title, but reserving, of course, the usual quit-rent. The granting of the patent was evidence that all the previous requisites had been complied with. When it had been engrossed, the governor signed a warrant, directed to the keeper of the great seal, to affix the great seal, enter the patent on the public records and register his warrant. The proprietors were strict in their orders that no patents should be arbitrarily disregarded or vacated by their officers. As no patent was to be viewed as a private deed, it should furthermore not be cancelled unless this was made a matter of public record, either by some legal order, or by an acknowledgment on its reverse side signed by the parties. At the same time they directed that the greatest care should be observed in granting patents, so that none should be issued for lands already patented.²

Passing now to the consideration of the quit-rents,³ we find that they were collected from the common and manorial lands

¹ P. L. B., vi, T. P. to Peters, Sept. 21, 1759; and to Hamilton, Oct. 18, 1760; ix, T. P. to Physick, Aug. 10, 1768.

² *Ibid.*, iii, T. P. to Peters, July 17, 1752, and Jan. 9, 1753; ix, T. P. to Tillghman, Nov. 7, 1766. The following is a specimen of an early grant: 500. acres (three-fifths of all royal mines, free from all deductions for digging and refining, excepted), with all fishing, fowling, hawking, hunting, mines, minerals, quarries, meadows, pastures, marshes, savannahs, swamps, cripples, woods, underwoods, timber, trees, ways, waters, water-courses, liberties, profits, commodities, hereditaments, advantages, and appurtenances. Rent at one shilling per 100 acres. Penn MSS., *Pa. Land Grants*, 1705.

³ In one of William Penn's earlier wills, written about 1701, it was stated that even his children were to pay quit-rent in some form to him as proprietor. When his sons became proprietors, the private property of each in Pennsylvania was generally held of themselves jointly by some nominal quit-rent. P. L. B., ii, T. P. to Logan, June 16, 1747.

and from lots in Philadelphia.¹ They were so called because the tenant was by their payment "quit and free" from all other feudal services, while they were considered as public in their character² in contradistinction to the other rents.³ Payable annually, they ranged in value from a pepper corn, a red rose, an Indian arrow, a buck's foot, a beaver skin, or a bushel of wheat, to several shillings per hundred acres, according to the period of time, the quality of land and the person to whom the grant was made.⁴ When the conviction became prevalent that an annual render by way of feudal acknowledgment was necessary for the perfection of title, the objections that had been urged

¹ The purpose in granting bank and water lots in Philadelphia was principally to encourage the building of wharves. This was stated in the patents, which were obtained only by special application. On the return of the survey, a patent was issued containing certain stipulations. Among them were first that the quit-rent should be larger than that imposed on ordinary city lots, and secondly, that this quit-rent was to continue for fifty years, at the expiration of which time the property should be duly appraised and one-third of the value paid to the proprietors as a perpetual ground rent. But sometimes the lots were sold outright at so much per foot.—Lewis, *Original Land Titles in Philadelphia*, p. 127. These proprietary thirds, as they were called, were very distasteful to the people. Constant complaint was made and frequent solicitations addressed to the proprietors to know on what terms a release or reversion of them could be obtained. As the reservations were a source of considerable revenue, such requests were generally refused or evaded. *Penn and Logan Corresp.*, i, p. 296; Penn MSS., *Correspondence of the Penn Family*, John to Thomas Penn, March 4, 1734; *Ibid.*, Supp. Proc., T. P. to Peters, March 1, 1745, and July 20, 1759; Penn-Physick MSS., E. Physick to T. P., April 19, 1769.

² *Penn and Logan Corresp.*, i, p. 188.

³ These were ground rents on tracts and lots of land within boroughs and towns, such as York, Carlisle, Easton and Reading, rents from ferries, and temporary rent for squares of ground or pasture.

⁴ Penn had been so desirous of actual settlement that he frequently granted land without purchase money, and with only a quit-rent reserved. Though no actual patent was issued, the settler was considered as the owner. His sons occasionally followed a similar course with settlements on the frontier. All such quit-rent, however, was exceedingly difficult to recover, as the neglect to demand it for many years, the patented lands being first levied upon, caused the people to believe they were not liable for it. P. L. B., ix, T. P. to Tilghman, July 7, 1766.

against its payment were dropped and the assertion made that the quit-rents were intended for the support of government. At any rate they formed a constituent part of the condition of sale, and were expressly mentioned in the patents.

In his description of the province published shortly after the charter, Penn declared that the quit-rent would be one English shilling, or its equivalent, per hundred acres. Those who so desired might buy off the most of it, but as he held of the king by a low rent, so all should hold of him by a low rent paid to secure their title and tenure.¹ In September 1681 he agreed in a special instance to sell the quit-rent for a slight increase in the amount of purchase money, and the annual render of a beaver skin, which was about the value of a crown. But he resolutely refused to abate it entirely, though in the extensive grant to the Free Society of Traders it was nominally fixed at one shilling, and the commissioners of property were allowed an abatement. His sons also expressed a similar unwillingness to dispense with it.²

From the very beginning difficulties arose in the collection of the quit-rents. At first the sheriffs were ordered by both the provincial court³ and Penn himself to "collect, levy and gather all fees, quit-rents, and arrears" due him, and if necessary to distrain for them. They were accountable, of course,

¹ "For £100 down I will sell off the yearly rent of £18, 6 s. 8 d., and will reserve but 50 shillings, which may be reduced as the purchaser pleases, but something must be reserved for the security of the title."—*A Brief Account*, etc. £20, 16 s. 8 d. was the annual value of 5000 acres at a quit rent of one penny per acre. The difference between this amount and £18, 6 s. 8 d., is 50 shillings, the same as the quit rent of one shilling per one hundred acres imposed upon 5000 acres that had been purchased. These 50 shillings the proprietor was at first willing to sell off gradually, but as a sign of the feudal tenure, he required some quit-rent to be yearly paid, even if it were no more than a red rose.

² Hazard, *Annals of Pa.*, p. 549; *Memoirs, Pa. Hist. Soc.*, i, Pt. i, p. 206; Penn MSS., T. P. to Peters, Oct. 6, 1755; *Ibid.*, *Supp. Proc.*, John Penn to Peters, July 29, 1751.

³ *Pa. Arch.*, 1st Series, i, p. 98.

to the commissioners of property, and after 1689 to the receiver general. But this use of the machinery of government soon fell into abeyance. Whenever it was necessary to proceed to ejectment, or to other forcible measures, the procedure was in accordance with established law. Hence the secretary or receiver general applied to the governor for a writ to the sheriff, who then with as many subordinates as might be requisite aided that official in enforcing the claim at issue. At a comparatively early date the proprietor had appointed deputy receivers in the Lower Counties, and to some extent also in the province; but various causes soon rendered their services almost useless. They were laughed at, refused payment, and even personally maltreated.¹ Indeed, associations were formed expressly to induce the people not to pay their quit-rents. This was especially true when the conflict between the assembly and the proprietors grew more bitter. The Penns were naturally anxious for the payment of the rents due them, and retaliated by issuing frequent orders to their officers to enforce collection, even to the extent of distress and sale.² But in order to guard against sympathetic outbreaks such directions necessarily had to be executed with great caution.³

As the inhabited portion of the province extended, and the subdivisions of land increased, the duties of the receiver general became very arduous. For a while he had personally at-

¹ *Col. Rec.*, i, p. 182.

² P. L. B., x, T. P. to Tilghman, Feb. 26, 1770.

³ "Braddock's defeat and the consequent uneasiness must not put a stop to your demanding our arrears in the town, and by degrees in the country. I desire you will not say anything about it in conversation, as it only raises discontents. We are only taking the same methods any common landlord does, and shall continue to do it till every man pays regularly once a year."—P. L. B., iv, T. P. to Hockley, Sept. 29, 1755. At other times the proprietors displayed considerable leniency in their dealings with people who had suffered from the ravages of war. "Interest and quit-rent are to be forgiven those persons who have suffered during the war." *Ibid.*, vi, T. P. to Peters, Aug. 10, 1759; vii, Dec. 12, 1761; Penn MSS., *Supp. Proc.*, Aug. 14 and Sept. 10, 1762.

tended to the collection of the quit-rents, but at times he had appointed deputy receivers who had performed their duties upon notice sent to the several constables. Therefore in 1756 the proprietors suggested that especially in the frontier counties a deputy receiver in the person of the county clerk, or if necessary an officer in each district where an assessor was chosen, should be appointed and paid by a fixed salary, or by a commission on receipts.¹ They thought there might be one such receiver for every eight or ten townships to collect personally from farm to farm, because, unless the amount of arrears was kept down, many people might object to paying anything at all.² In fact they believed the assessors ought to be empowered to oblige the people to declare the amount of quit-rent that was in arrears.³ But the accounts were in such a state as to make it almost impossible to appoint regular deputy receivers, either at fixed salaries or on commission.⁴

In this connection, it may be said that the failure to provide for a methodical statement of accounts in the rent rolls was another reason for the uncertain and spasmodic collection of this form of revenue. No quit-rent practically was ever paid in the Lower Counties, because no regular rent roll was made up there. Neither, until 1706, did anything like a regular rent roll exist in the province.⁵ The proprietary receivers, moreover, instead of putting the original tract in one column of the rent roll, and in another the several areas into which it had been divided by sale, inheritance, assignment or otherwise, made transfers from one account to another as they received notice of some alienation, and continued transferring and adding parts of other tracts to those already divided, until it was

¹ P. L. B., iv, T. P. to Peters, Jan. 10, 1756; v, to Hockley, Oct. 9, 1756; and to Peters, Sept. 8 and Sept. 30, 1758.

² *Ibid.*, ix, T. P. to Tilghman, Dec. 7, 1768.

³ *Ibid.*, vi, T. P. to Peters and Hockley, Jan. 13, 1759.

⁴ *Ibid.*, viii, T. P. to Physick, July 22, 1765.

⁵ *Pa. Arch.*, 2d Series, vii, p. 65.

scarcely possible to know from what piece of land the subdivisions originally came, its bounds, or to whom it was first granted.¹

Again, it was a constant practice, when lands were sold or divided by the original grantee or by his heirs or assigns, to make no mention of the arrears of quit-rent that had accrued. Official incapacity, together with the confusion existing in the proprietary family, made possible the continuance of this pernicious system. Hence when such lands were transferred, the whole of the arrears was often imposed upon the purchaser without his knowledge. Consequently, when the proprietors issued orders for the enforcement of their rights, considerable hardship might result to innocent persons, who would doubtless never have made the purchase, could they have readily ascertained whether these continuous quit-rent mortgages were yet unpaid.² Moreover, we have observed in the charter that, except in regularly organized manors, persons who bought of a grantee, held of the proprietor and not of the grantee. Therefore, in cases where ownership was divided and subdivided by alienation, the rent paid by the original grantee or his heirs constantly diminished, because no one could be obliged to pay the entire quit-rent on any tract of land as originally purchased, unless the whole belonged to him. If the tract was divided, just as many different accounts must be made up of sums received and receipts given as there were subdivisions. The original grantee or his heirs thus paid quit-rents for such a portion only as remained unsold, and the subsequent owners paid only for their respective shares.

It was not until 1742 that a scheme for the formation of a rent roll was definitely undertaken,³ but for several years very little was done. In 1757 the proprietors suggested that for

¹ P. L. B., vii, T. P. to Physick, Aug. 6, 1761; ix, to Tilghman, May 10, 1766.

² Penn-Physick MSS., i, Benj. Chambers to Wm. Penn, February, 1700.

³ P. L. B., ii, T. P. to Peters, Sept. 17, 1742.

this purpose persons should be appointed in every township to examine the titles of the inhabitants according to the returns in the surveyor general's office, though at the same time they admitted that it was doubtful whether very many would be willing to accept the employment.¹ Also it was not easy to make a rent roll based on the warrant books, for they often gave merely estimates of land granted, and sometimes the exact number of acres surveyed was not returned in the certificate of surveys.² The proprietors then suggested that the plan followed by Lord Baltimore in collecting his quit-rent should be imitated. This was to make a roll in which were entered in one column the tract as originally purchased, the name of the buyer and the quit-rent at the rate usual at the time of the purchase.³ In another column a record was made of subdivisions of original grants, alienations and transfers. This was taken from the books of the land office, and by means of it the original tract was kept entire on the roll, and the several persons who later held subdivisions of it were mentioned as those from whom in each case only a part of the rent was received. Otherwise every purchaser would appear as a tenant, and part of two tracts might be brought into one account under his name. It would soon be impossible then to know under what purchaser, or on what tract as first surveyed, the person paying quit-rent had settled.⁴ Then debt books based on the roll were given to the deputy collectors to facilitate their collection of the rents. But an obstacle presented itself in the shape of certain provisions in an act of assembly passed in 1705, by which the proprietors were obliged to receive quit-rent for part of a tract. This however was true only when a person who had bought a portion of an original tract, either directly of the first grantee

¹ P. L. B., v, T. P. to Chew, Dec. 12, 1757.

² *Ibid.*, ii, T. P. to Lardner, June 8, 1745; x, to Hockley, July 24, 1772.

³ *Ibid.*, v, T. P. to Hockley and Physick, Sept. 9, 1758; vi, to Peters, Aug. 31, 1759.

⁴ *Ibid.*, vi, T. P. to Hockley, July 20, 1759.

or from his heirs or assigns, had presented himself at the land office with his certified deeds, for the purpose of having the transfer of the property entered on record, had paid the fee for the entry, and had his name properly inserted as a tenant in the rent roll. Even then they were not compelled to consider more than one alienation of the original tract, or to receive less than three pence sterling or a peck of wheat, which was the quit-rent on twenty-five acres of land alienated before March 25, 1706, or less than one shilling sterling or a bushel of wheat, the quit-rent on a hundred acres alienated after that time.¹ Hence unless a person by purchase or otherwise from a patentee prior to the date mentioned had twenty-five acres, or subsequent thereto had one hundred acres, he could not oblige the proprietors to receive him as a tenant; but many deputy receivers had accepted small rents on subdivisions of the first alienation of the original patented tract.² Otherwise they were presumed to be ignorant of any such alienations, and could charge the original grantee or his successors for the whole rent reserved. They therefore directed their officers, especially the deputy receivers, to pay no attention to any alienation of property, and to make no inquiries concerning it, but to demand the quit-rent on the original tract, until the person who had made such alienation should request its entry on record.³ It was of course for the interest of the proprietors to keep the tracts as far as possible from subdivision. Hence, as the person for whom any subdivision of the first alienation from the original tract had been made, could not insist that the proprietors should receive him as a tenant, they ordered that the person who represented the original first alienee, or any other parties then in possession of the tract,

¹ P. L. B., vi, T. P. to Peters and Hockley, Jan. 13, 1759; viii, to John Penn, July 6, 1765.

² *Ibid.*

³ *Ibid.*, v, T. P. to Chew, Dec. 12, 1757; vi, to Peters and Hockley, Jan. 13, 1759; vii, to Physick, Aug. 6, 1761.

should be answerable for the rent of such portion, as if it had never been so disposed of.¹ In other words the deputy receivers were to pay no regard to any sub-grants, or receive any rents from sub-tenants. This would hinder the indefinite subdivision of the property, and the consequent diminution of the quit-rents, and would also be a literal compliance with the provisions of the act of 1705.² Finally they suggested, as was the custom in Maryland, that an appropriate name should be given to every tract patented.³ The subdivisions there should be designated as parts of the tract bearing that name, rather than by the names of the individual grantees who changed with every act of transfer or succession. From the land as thus designated, the quit-rent should be demanded,⁴ and when the rolls were made up⁵ the debt books should be prepared and given to those appointed to receive the rent.⁶ Though orders that

¹ P. L. B., vi, T. P. to Peters, Aug. 31, 1759; vii, to Physick, Aug. 6, 1761.

² The proprietors thought that, when a person held a tract on which the quit-rent was less than the sums mentioned in the act, he ought to combine with others similarly situated until the amount could be legally accepted by the receivers. *Ibid.*, v, T. P. to Chew, Dec. 12, 1757; vii, to Physick, Aug. 31, 1763; viii, to John Penn, July 6, 1765.

³ *Ibid.*, ii, T. P. to Lardner, June 8, 1745.

⁴ *Ibid.*, vii, T. P. to Physick, Aug. 6, 1761; ix, to Tilghman, Nov. 7, 1766.

⁵ The rent roll used in Philadelphia County, and which may serve as an example of the one projected for all the counties, was arranged as follows: In the first column was a description of each tract of land as originally purchased, and from which alienations might or might not have been made. In the second was a record of the patent for each tract, and the page of the book on which it was entered. In the third were the names and quantity of the first alienations within the tract, if any had been made. In the fourth were the names of the present possessors, and the amount held by each. Then followed the quit-rents at various rates to one or more of which the tract and its subdivisions were liable. Thus, in the fifth column was the quit-rent at the rate of one shilling per one hundred acres; in the sixth, at a half penny per acre; in the seventh, at a bushel of wheat per hundred acres; in the eighth, at one penny per acre or any other rent; and in the ninth, the total annual quit-rent in sterling. Penn MSS., *Philadelphia Lana Grants*.

⁶ P. L. B., vii, T. P. to Physick, Aug. 31, 1763; x, Juliana Penn to Tilghman, Nov. 28, 1774; and to John Penn, Nov. 30, 1774, and April 5, 1775.

receivers should be appointed and that such a rent roll as has been described should be prepared were frequently issued by the proprietors, they were not obeyed. The reasons for this were the intricate nature of the regulations just described, and the unwillingness of the receiver general to submit to any check on his authority. But from 1770 to the Revolution the proprietary officers found comparatively little difficulty in the collection of the quit-rent.

The fact will be recalled that in the charter power to create manors was given to the proprietor. It remains to be seen how far this was exercised. Twenty thousand acres were bestowed on a body of patentees, which in April 1682 was chartered under the name of the Free Society of Traders in Pennsylvania, and the land which it possessed was erected into the manor of Frank. In its charter were provisions that the corporation should receive all the rents, services, and dues which otherwise would accrue from the land to Penn himself, with the usual manorial jurisdiction and privileges. Three officers of the society also were permitted to sit in the provincial council. Articles of settlement, conditions of subscription, purposes, and methods of trade were soon after published. These included an extensive system of agriculture, the establishment of manufactures, and the carrying on of the whale fisheries. But the Free Society of Traders proved a failure. A manor house was erected on the land of its president,¹ but, so far as appears, nothing further was done to improve or organize the manor, and in 1721 the land of the company was vested by legislative act in certain trustees to be sold for the payment of its debts.²

By way of illustration, the language of another manorial grant made in 1685 may be cited: "Eneas MacPherson of Scotland is given 5000 acres with all the customary privileges in free and common socage as of the seigniory of Windsor,

¹ In 1684 he summoned by writ all justices and "lords of manors" to attend a session of the provincial court at Newcastle. *Col. Rec.*, i, p. 139.

² *Votes of Assembly*, ii, p. 290.

with powers to erect the same by these presents into the barony of Inversie. The said Eneas MacPherson may hold court baron, view of frank pledge, and court leet by himself or stewards. The quit-rent is one shilling per one hundred acres in lieu of all services and demands, without molestation of the proprietor, his heirs, and successors."¹ Again in 1701 the proprietor granted fifty acres within his own manor of Pennsbury to Martin Zeal, the same to be held of the manor and to be subject to the regulations of its courts when constituted. About the same time he directed the commissioners of property during his absence, to erect manors whenever possible; but the order was not obeyed.² This shows that at that time Penn still cherished the plan of erecting manors³ within the province. The difficulties with which he was beset may have prevented it; but had manorial courts been established in the province,⁴ the experience of other colonies proves that they

¹ Penn MSS., *Pa. Land Grants*.

² Smith, *Laws of Pa.*, ii, p. 142.

³ He had attempted the previous year to have a law passed for the erection of courts baron, but the effort failed. *Col. Rec.*, i, p. 607.

⁴ In 1688 the Welsh settlers refused to consider themselves included within the counties of Philadelphia or Chester, and therefore would not consent to bear any portion of the taxes, serve in office, or perform jury duty. They claimed to be a distinct barony, and sent a petition to the commissioners of property stating that the proprietor had promised them 40,000 acres of land regularly laid out as a manor, and that they should not be obliged to answer in any provincial court, but should have courts and magistrates of their own. In accordance with the terms of this grant they asserted that he had issued a warrant for surveying the tract, March 13, 1684. Penn MSS., *Autograph Petitions*. They also protested against being summoned to the county courts of Philadelphia or Chester, lest they should be assessed in both counties, and called for a confirmation of their rights. It appears, however, that they were not numerous enough to occupy the whole of the barony. Therefore the governor and council declared that several baronies might lie within the same county, and that the Welsh were included within the bounds of Chester county. Inasmuch as they had refused to pay the interest and quit-rent from the date of the warrant, their plea to be regarded as a manor was denied. The fact that they possessed a manor could not be proved from the minutes of the commissioners, and therefore the unsettled part of the tract was granted to other purchasers. *Col. Rec.*, i, pp. 265-6; *Pa. Arch.*, 1st Series, i, p. 108.

would have possessed little vitality, while in Pennsylvania the spirit of the people was particularly opposed to the institution.¹

Hence in the full and strict sense of the term there were no manors in Pennsylvania, whatever the proprietary tenths and other large surveys may have been denominated. Though the tenure expressed in the patents was nominally "as of the manor or reputed manor of ———," or, "as of the seigniorship of Windsor in free and common socage, by fealty only," yet really it only implied rent service.² Often the lands granted within a county were held as of the principal manor of that county, whether the particular tract was actually within the surveyed limits of the manor or not.³ So far as the proprietary manors⁴ were concerned, the people settled in such large numbers that whenever the Penns secured a new grant of land from the Indians, the surveyors for many years were not accustomed to survey an amount equal to the tenth part which should have been set aside for manorial purposes. In some cases the proprietors had to content themselves with land which had been avoided by the settlers because of its worthlessness. But in order to prevent any vacant land which lay between former surveys and was accidentally discovered from being surveyed for themselves, the proprietors directed that such land should be granted to the discoverer at reduced rates. Moreover any reservation of land other than that directly sur-

¹ The manorial idea, however, had not disappeared as late as 1750, for about that time Count Zinzendorff applied for a large section of country, which application the proprietors refused because special powers and privileges were desired. In order therefore that the people might be responsible only to the regular magistrates, nothing that would permit a separation from the rest of the inhabitants should be done. Penn MSS., *Supp. Proc.*, Thos. Penn to Peters, May 13, 1750.

² Smith, *Laws of Pa.*, ii, p. 142; Huston, *Original Titles*, etc., p. 80, *et seq.* Penn. MSS., Pa., Land Grants.

³ *Ibid.*, Patents in the land office at Harrisburg.

⁴ In 1756 the proprietors suggested that the principal tenant in each manor should be given the general powers of a bailiff over the other tenants, but the suggestion appears to have been unheeded. P. L. B., iv, T. P. to Peters, Jan. 10, 1756.

veyed for manors was distinctly forbidden.¹ For land in these manors, which was generally of a superior quality, the proprietors issued what were called "warrants to agree," in which a price was fixed based on the report of the deputy surveyors concerning the worth of the tract in question.² But they usually preferred to lease rather than to sell any portion of these reservations,³ though in 1764 option in the matter was given to Gov. John Penn.⁴

As an institution the manor is closely connected with the township. It had been part of Penn's plan to have the inhabitants settle in villages or townships, dividing 5,000 acres among ten or more families, according to their ability to cultivate such an area.⁵ Hence, in order that the tracts bought by large purchasers might lie compactly together, he introduced into his warrants the clause, "according to the method of townships appointed by me." But, owing to the very nature of early settlements, this plan could not long be pursued. In order to oblige the people to settle more compactly and to check the growth of speculation in land,⁶ a similar plan was broached in 1766. Orders to this effect were frequently sent to the land officers, but the collusion of the deputy surveyors with the land speculators defeated their execution.⁷ Yet the lands in the central and western parts of the province were usually settled according to a system of townships similar to that of New England.

Considering now a common usage of the land office known as the "law of improvements," we find that a title by improve-

¹ P. L. B., ix, T. P. to Tilghman, Nov. 7, 1766.

² Huston, *Original Titles*, etc., p. 196.

³ P. L. B., iv, T. P. to Peters, Feb. 21, 1755.

⁴ *Ibid.*, viii, T. P. to John Penn, July 13, 1764.

⁵ *Mem. Pa. Hist. Soc.*, i, Pt. II, p. 418.

⁶ P. L. B., viii, T. P. to Smith, Apr. 1, 1766.

⁷ *Ibid.*, ix, T. P. to Tilghman, July 7, 1766, Aug. 5, 1767; to John Penn, May 9, 1769.

ment was a right acquired by one who had built, cleared, and resided on land not sold or appropriated by the proprietors. Improvers were thus presumed to be persons who had inadvertently settled on lands to which they had no real titles, but who were not disturbed except in special instances. In the case of conflicting rights also, it was the custom to give the preference to the improver. Improvements without warrants did not form a part of the system of William Penn, nor did he intend to allow any other kind of title than that of legal purchase from himself. But through the acquiescence of the land officers and even of the proprietors themselves,¹ the practice of making allowance for improvements grew up from a very early period. But when squatters became numerous² the proprietors began to express the opposite opinion. In 1738 they issued a proclamation stating that many persons had obtained from the commissioners of property warrants for land on the agreement that they would pay within a specified time both the price demanded and the quit-rent, or forfeit their rights. A large number of these persons had possessed themselves of land without complying with the conditions, and others without permission had entered upon lands and transferred to third parties various claims under the name of improvements. It was therefore declared that such persons would be prosecuted, and the lands granted to others, if the regulations were not obeyed.³ But, though the proprietors endeavored to discourage the practice, it is evident that they soon realized the necessity of concession, for they allowed under certain circumstances a species of title known as inchoate to be developed in the following manner. By settlement and improve-

¹ Indeed, so far as it lay in their power, the proprietors never increased the price of land, so as to affect unfavorably any person who had already settled and made suitable improvements. But such a person could take advantage of a fall in price. P. L. B., iii, T. P. to Hamilton, Sept. 26, 1751; vii, to Peters, Dec. 12, 1761.

² *Ibid.*, T. P. to Tilghman, May 10, 1766.

³ Huston, *Original Titles*, etc., p. 283.

ment a right of pre-emption was established. When the lands were so settled and improved, the occupant would apply for a warrant for a certain amount including his improvements. On payment of two-thirds of the purchase money, a warrant was made out by the secretary and signed by the governor. This being recorded in the surveyor general's office, a copy was sent to the deputy surveyor with an order to make the survey. Then a draft was returned into the surveyor general's office, and as usual a certificate entered with the secretary. Upon payment of the remainder with interest and arrears of quit-rent, the patent was issued. Absolute title, however, was not regarded as secured till the patent was delivered.¹

This general description of the procedure of the land office, may well conclude with a notice of its attitude toward the settlement of the frontier. About 1718 the immigration of Scotch, Irish and Germans became very brisk, and from that time the frontiers of the province were pushed steadily westward. Conflicts were brought about with the Indians, because many of the immigrants appropriated their lands. By 1726 it was estimated that 100,000 persons had settled without a shadow of right.² Many of them made their way to the disputed region near Maryland, where no lands could honestly be sold. Still more beset the commissioners of property with queries as to where they should locate themselves, declaring that Penn "had invited the people to settle his country."³ They pretended to buy but had no money, and even had the disposition to pay

¹ *Col. Rec.*, ix, p. 380.

² Some located themselves on reserved and manor lands, expecting to have them on lease. Indeed, in 1751, a petition was sent to the king by a number of these people, complaining that the proprietary officers had burned their houses and otherwise injured their property. The Privy Council resolved that the complainants should be referred to the courts of Pennsylvania. Penn MSS., T. P. to Peters, July 8, 1752.

³ Penn MSS., *Offic. Corresp.*, i, J. Logan to Mrs. Penn, Feb. 1, 1726; *Pa. Arch.*, 2d Series, vii, p. 96.

for the land they had seized been shown, they were often in doubt where to apply. Hence many took advantage of the uncertainty and paid no attention to the proprietary officers, because they could grant no more lands than would repay Penn's mortgage of the province in 1708.¹ The confusion was heightened by the report that the contestants in the proprietary family intended to divide the province into shares, for if that were done the general interest in the enterprise was sure to decline. This was later denied by the Penns, who at the same time urged that an agreement should be reached with the newcomers by giving them grants of some kind rather than allowing them to settle without any.² But the commissioners were unable to prevent encroachments on the land of the Indians, and of this as well as of other abuses connected with the settlements complaints were constantly made. In consequence of these troubles the Penns were frequently besought to come over, and place their landed interests on a firm basis.³ In 1730 the Penns stated that the people who at the suggestion of the commissioners had settled on any lands, could have them at the price for which they were sold at the time of settlement, plus the interest since the time of purchase, and minus the value of their improvements. Those who could not do this should be obliged to pay a quit-rent proportional to the purchase money. But the squatters stubbornly held their ground, regardless of attempts at ejectment.⁴ Then the secretary was instructed to allow settlers to pay only the interest, but no titles were to be given to them. Such as had paid interest, however, could not be ejected⁵ without a bill in

¹ *Pa. Arch.*, 2d Series, vii, p. 96.

² *Ibid.*, p. 131.

³ Penn MSS., *Offic. Corresp.*, ii, J. Logan to J. Steel, Nov. 18, 1729.

⁴ P. L. B., i, John and Thomas Penn to J. Logan, April, 1730.

⁵ "With respect to the people, either in large or small bodies, intruding on our property, it is what we cannot avoid, and our only remedy is to defend ourselves in courts of justice." P. L. B., x, T. P. to Hockley, June 16, 1774.

chancery, though those who had not done so might be removed without legal process.¹

During the Indian wars it was often necessary for the accommodation of the armies on the line of march, that settlements in the wilderness should be encouraged, and persons who would thus settle were given the preference in event of the sale of the land. As a means of defense for the frontiers, and as military stations, towns were therefore established. Some of their soil was granted by warrant on moderate terms, but still more was appropriated without show of right. Furthermore, as an inducement to protect the frontier, Gov. Morris in 1755 offered to grant lands west of the Alleghanies free of purchase money, and with exemption from quit-rent for fifteen years. Such of these lands as should be settled within three years after the removal of the French were to be patented without fees, except those paid for surveying. This offer was extended to all persons in Pennsylvania or the neighboring provinces who would join an expedition for the expulsion of the French. The proprietors as a rule were opposed to the formation of such remote settlements, because they were so far from the seat of government as to be almost independent; while they excluded the Indians from a fine region for hunting before the advance of settlers had made that course of action necessary. Neither did they approve of the governor's offering land without fees; but knowing that the country at that time was in the throes of a merciless war, and that the need of aid was imperative, they conferred with the English ministers as to the way in which to make it most effective. The result was that after a time they confirmed in part Morris' proposition. Under the pressure of circumstances they had at first intended to grant the territory in question free from all demands, except the fees of the surveyor and secretary. But when they saw that the chances of securing any quit-rent from the class of people who would settle there were very small, and that,

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, May 4, 1743.

if they agreed to forego the legal right of demanding it, they would be guilty of an inconsistency which might militate against its collection in more favorable localities, they directed Morris to grant the land at the usual quit-rent of a half-penny per acre, or even at a farthing per acre, if no more could be obtained. The payment of this rent, however, was not to commence till March 1786. The governor was also ordered to provide strict regulations for preventing the evasion by the people of the conditions on which the grant should be made. In other words they must actually settle the land and not dispose of it to land speculators.¹ On these terms the offer of what was known as the "campaign land" was made. The offer was not accepted, because the mere holding of land would not result in the formation of compact settlements, or oblige the settlers to observe military discipline.

¹ *Votes*, iv, p. 418; Penn MSS., T. P. to Peters, July 3, Oct. 4, Oct. 25, and to Morris, Oct. 6, 1755. P. I., B., iii, to Morris, Oct. 4, 1755.

CHAPTER III

HISTORY OF THE LAND SYSTEM

HAVING in the preceding chapter outlined the system of territorial administration, it is proposed now to sketch somewhat briefly its history, until the land office was established in what might be called a more modern form, and with particular reference to the several attempts of the assembly to regulate it. In this connection it may be said that the proprietors were generally careful to distinguish between their public and private territorial rights. They were willing that the legislature should enact, alter, or repeal laws for the recording of deeds, the transfers of land from one individual to another and the like, but with the aid of the crown they resisted all attempts to interfere with the terms or conditions upon which they were willing to dispose of their property.¹

In May, 1700, Penn offered to the council a bill for the "confirmation of freeholds and surveys," but that body saw "no service in it at that time."² Owing to his superabundance of good nature, or to a feeling that only a liberal concession on his part would meet with a favorable response from the assembly, he agreed at its session at Newcastle to pass a law entitled, "An act for the effectual establishment and confirmation of the freeholders." On account of past neglect and errors both of officers and people, which had injured the proprietor and made the inhabitants insecure, it was provided in

¹ In 1701, Penn asserted that he would never permit an assembly to intermeddle with his property, lest such an act should be drawn into a precedent. *Col. Rec.*, ii, p. 40.

² *Ibid.*, i, pp. 607, 610.

this act that all lands duly settled by virtue of warrants or patents obtained from the governors of New York prior to 1681 should be quietly enjoyed; that the possession of land held under warrants issued by authority of the proprietor or of his commissioners of property should be confirmed; and that, even if no patent had actually been granted, yet if peaceable entry and possession had been obtained by warrants or otherwise and had continued for seven years, it should give ample title. It was also enacted that all patents should be issued under the great seal, and should give the grantees an absolute title to the lands therein mentioned to be granted or confirmed, whether they were more or less than the number of acres really surveyed, neither should they be subject to further survey, and all tracts already granted should be confirmed. But the proprietor by his surveyors might within two years thereafter resurvey any person's land. If upon such resurvey, allowing four acres in the hundred, over or under, for the difference of surveys, and six acres in the hundred for roads, barrens, uneven ground and the like, there should be found more land than the amount for which the tract so surveyed had been originally laid out, then the proprietor was to have all such surplus land, while the present possessor should have the refusal of it, if he wished to buy. In event of failure to agree as to the terms of sale, the respective claimants should each choose two persons to fix the price, or to determine where the surplus should be taken off; and the proprietor was to make good, upon resurvey, all deficiencies that might be found, with the allowances aforesaid, and with the reservation of the possessor's improvements. In cases where after several alienations of the property had been made under the notion that the words originally in the deed of purchase or sale expressed the correct number of acres, and where on a resurvey a surplus had been found to consist of one plantation or parts of several, then the proprietor's surplus should be taken off

the uncultivated residue undisposed of, otherwise off each plantation proportionately. But no surveyor should be allowed under a heavy penalty to enter upon any person's land to make a resurvey, without due notice to the owner, and in case any surveyor wilfully or negligently surveyed to the prejudice of the owner, he should give twofold compensation for the damage done. The first hundred purchasers from Penn, if they made speedy application therefor, were to have the liberty of determining the location of their property. But in cases of co-partnership, where one party died before a division had been made, his heirs or assigns could claim their just proportion. Lastly, it was declared that the clause in the charter of privileges of 1683, concerning the confirmation of lands and the reservation of such rents and services as were or ought to be customarily reserved to the proprietor, should be in full force in spite of the fact that the charter had ceased legally to exist.¹

Not satisfied with the provisions of this law, and induced by a petition from the inhabitants of Philadelphia,² in September 1701 the assembly desired that in case of absence the proprietor should be represented by persons fully empowered to grant and confirm lands, as well as to make satisfaction in case of error; that there should be no delays and only lawful fees should be allowed;³ and that an instrument should be granted to amply secure the people in their property. The request was also made that no matter concerning property should be laid before the governor and council; that rents should be discontinued

¹ Bradford, *Laws of Pa.*

² *Collections Pa. Hist. Soc.*, i, no. 4, pp. 275-6.

³ A short time after his return to the province in 1699, Penn had been requested to establish a land office with definite rules of procedure, for granting and confirming lands, for the want of which office many had been unwilling to pay their rents. It was declared also that, had such an office been established before, it would have promoted the settling of the province. More careful surveyors and surveys, as well as more efficient land officers generally, were therefore demanded. Penn-Physick MSS., i, Benj. Chambers to W. P., Feb., 1700.

and reservations withdrawn from the land on which Philadelphia stood, as well as that of the liberties; that the original allowance of ten acres in the hundred according to the law above cited should be granted in all cases whatsoever, and that this law should be inserted, with suitable amendments, in a proposed charter. Several other demands were also made, affecting mainly the preservation of deeds and the granting of certain privileges in the Lower Counties.¹ Penn in his reply protested that several of the articles did not concern a house of representatives which was convened on affairs of government. He believed that disputes about unconfirmed property rights ought to lie before him. He denied the right of the assembly to interfere in the agreement between him and the first purchasers concerning Philadelphia, and complained because of its attempt to prevent him from raising his rents and prices in proportion to the advantage which time gave to the property of others, especially as he was under so great expense in his controversy with Lord Baltimore.* After acquiescing with some remonstrance in several of the particulars he expressed his willingness to grant the allowance demanded, but only for the ends proposed by law.³ The assembly insisted strenuously that all misunderstandings should be removed, and the allowance granted on all lands whatsoever, whether occupied or to be occupied by purchasers or tenants. In answer Penn stated that, as a rule, he had never intended to make up for deficiencies. But understanding that the people regarded the law as unfair, because when there was a surplus of surveyed land an allowance of ten acres per hundred was made, but when the supply became exhausted only two acres were allowed, he expressed his willing-

¹ *Col. Rec.*, ii, pp. 37-39.

² It was agreed that the proprietor's expense for the preservation of the Lower Counties should be considered a public charge, and should be defrayed from the "£2000 free-will offering money," 1684. *Ibid*, i, pp. 117-118.

³ *Ibid.*, ii, pp. 39-43.

ness to make a concession of six acres per hundred to all persons upon resurveying. But the assembly refused to accept his offer. At his own home he then expostulated personally with its members, chiding them for their failure in duty not only to him but to themselves and their constituents in that they did not make a proper use of the opportunities which he had given them for their betterment. He advised them not to reject his proposition, and for the purpose of coming to a decision persuaded them to hold a session in his private parlor. Then they sent him an unsigned paper stating that they still refused to accede to his offer, because several of their number had returned home believing that ten acres per hundred would be allowed to all persons concerned.¹ Both parties, however, remained obdurate.

A short time after David Lloyd, the leader of the assembly, prepared a charter of property, which was to settle in the nature of a corporation whatever related to the proprietor's governmental as well as territorial powers. Being urged to sign it Penn acquiesced with some reluctance, and directed the secretary to affix the great seal to it unless within six months he should send an order to the contrary. Within the specified time after his return to England,² he did send such an order to Gov. Andrew Hamilton.³ This aroused so much wrath that

¹ *Col. Rec.*, ii, pp. 54-55.

² At his departure from the province, in the latter part of 1701, he empowered the commissioners of property to sell all concealed or vacant lands, to issue patents, to appoint proprietary officers, to grant lands on whatever terms might appear advisable, to dispose of surplus land, and after careful resurveys, to make satisfaction according to law for all deficiencies, wherever they occurred. Huston, *Original Titles*, etc., p. 80 *et seq.* These concealed lands were a source of considerable complaint and of charges of fraud against the proprietors. Reed, *Explanation of the City and Liberties*. They were simply small tracts lying between various surveys of the same piece of property, and whose existence for any reason the proprietary officers chose to conceal until a favorable opportunity to dispose of them presented itself.

³ *Col. Rec.*, ii, pp. 62, 325; *Pa. Arch.*, 1st series, i, p. 148.

in August 1704 the assembly connived at sending him an address accusing him of hypocrisy, want of faith and a variety of other serious faults. It was drawn principally by Lloyd and despatched to the proprietor indirectly, so that others might learn of his consummate wickedness.¹ But the next assembly, and the people in general, rather deprecated this exhibition of temper. Furthermore, on account of this refusal of the proprietor to confirm Lloyd's charter of property, and of the repeal of the act of 1700 by the queen in council February 7, 1705, the commissioners of property had great trouble in recovering surplus land. In fact, it was exultingly said that Penn was now cut off from all redress, if any injury should be done him. On his part he approved the forfeiture of land for failure of payment, and other stringent measures which the commissioners deemed wise to adopt.² Three years later the assembly in an address to Gov. Gookin, took as the basis of a representation against a proprietary officer the petition of a number of persons who claimed to be aggrieved because their old patents had been fraudulently obtained from them by the proprietor or his agents. It took exception also to the supposed exactions of that officer, and the existence of two receivers general, the one appointed by Gookin, and the other by Penn.³

In 1712 the assembly, taking advantage of the fact that Penn was overwhelmed with financial difficulties, passed a law called "An act confirming patents and grants." By this act it was provided that the law should not be so construed

¹ It may be said that in 1699, on account of a burdensome debt to his dishonest steward, Penn had the expectation of raising a considerable sum in Pennsylvania. As this was not forthcoming, he was at first very severe in his exactions, and thereby forfeited the affection of many staunch admirers. The next year however, he made ample amends, but unfortunately at his departure left behind an adverse faction. Penn MSS., *Offic. Corresp.*, ii, J. Logan to the proprietors, Nov. 14, 1731.

² *Fenn and Logan Corresp.*, ii, pp. 72, 304.

³ *Votes*, ii, pp. 33, 141.

as to confirm the possession of any land taken up by virtue of early grants from the governor of New York, and not duly settled or improved by the grantee or his assigns prior to 1682. Neither should it give any right to a claimant or possessor of lands that had not been taken up or surveyed by virtue of a warrant or order from the commissioners of property. So far as grants and patents were concerned, the proprietor or his officer, upon reasonable demands therefor, should make all such grants, patents, and assurances according to the laws of the province, as would insure absolute title to all lands previously sold or thereafter to be sold, for such "estate, terms, lives, years, uses, and under such rents, or acknowledgments," as might be agreed upon. A grant or patent from the proprietor, sealed and entered in the rolls office, was to be good in law, and should not require delivery before witnesses, livery and seisin, or such acknowledgments as were necessary for the validity of private deeds. Persons holding claims to unlocated lands by settlement, improvement or otherwise were protected by a clause which stated that a prospective purchaser of the territory might have the next most advantageous place. But the clause was not to make valid any patent that had been vacated by due process of law. Where any prior right appeared, however, the proprietor should refund to the purchaser the sum received with interest. Finally, no grants or patents should be considered defective or prejudicial¹ to the rights of the grantee by reason of any misnaming, mis-

¹ In 1683 a petition concerning the confirmation of patents was sent from the Lower Counties. Penn answered that the people were at fault, because they had not made any efforts properly to secure their patents, after express orders for that purpose had been issued. This was no reason, he thought, for giving them a pretense to avoid paying quit rents. With other landlords, he believed such a course of conduct would weaken their titles or "pinch their pockets." *Col. Rec.*, i, p. 86. The following year, however, he sent from England a number of blank forms, which were to be drawn up into an instrument for confirming patents. The president of the council was to affix the great seal to the document, but through his neglect it was not sealed. Hence in 1689 it was cancelled. *Ibid.*, ii, p. 231.

recital, or non-recital of the lands supposed to be purchased, or of their location, or because of any want of form, or of entry on record, or of sealing with the great seal, or for any failure to ascertain the proprietor's own title, but all such grants should be available in law against the proprietor, and should be adjudged most beneficially to the grantee.¹ The act was repealed² by the queen in council, February 20, 1713, but the custom of resurveying as provided for in this and in the preceding act was established and continued.³ Several years later, in 1719, the assembly endeavored to pass an act providing for the survey and confirmation of lands sold by the proprietor and not yet patented, as well as for the confirmation of all old patents and grants. A bill for this purpose however failed to secure the necessary majority.⁴

For nearly forty years the assembly refrained from attempts to encroach on the control of the land office by the proprietor. But in an address to Gov. Morris, in 1755, it declared that the state and management of the land office were "pretty much of

¹ Bradford, *Laws of Pa.*

² The reasons for repealing it, as given by the attorney-general, seem based on the idea of supposed injustice to the grantees, rather than on any desire to protect the rights of the proprietor. This was in keeping however with the jealousy cherished by the home government against the proprietary provinces. He suggested its repeal to the Board of Trade, because it confirmed the titles to lands bestowed by old grants before William Penn was given the government, as well as to new grants made since that time which had not been duly seated and improved by the grantees before 1682. If Penn had bestowed these lands since the grant prior to 1682, the prior grant would be set aside. Again he found fault with the proviso that the proprietor was not to make good a right to unlocated lands to a purchaser who through inadvertency or misinformation, had obtained a patent for lands to which a prior right existed, to any further extent than could be done by the bestowment of the same quantity of land in the next most advantageous place which such purchaser might choose, after ascertaining that it was vacant and free from other claims. He thought this was unreasonable, because if no such place was found the purchaser would have no satisfaction for his purchase. *Pa. Arch.*, 1st Series, i, p. 159.

³ Penn. MSS., *Pa. Land Grants*; P. L. B., vii, T. P. to Peters, Feb. 13, 1762.

⁴ *Votes*, ii, p. 256.

a mystery.”¹ Therefore in 1759 it passed a law entitled “An act for recording warrants and surveys.” This provided for the establishment at Philadelphia of an office, at the head of which should be a recorder, who was bound under a penalty of £20 to register all warrants, surveys and other documents relating to land. These papers were to be as valid in law as documents issued by the secretary or surveyor general, and copies certified by the recorder as valid as the originals. The recorder was also given the right to demand and recover all warrants, surveys, charts, maps, draughts, and other records of land granted by the proprietors, or made and signed by the surveyor general or his deputies, which were, or ought to have been, returned and lodged in the office of either the secretary, or the surveyor-general, and which might be useful as a means of proof to parties claiming rights to land. In case any documents could not be delivered, and it could be proved to the satisfaction of a jury that they had been burned or otherwise destroyed with the consent of a proprietary officer at any time after the passage of the act, then the recorder might recover to the use of the party aggrieved damages to the extent of double the value of the land. But the costs of the suit, if brought for the benefit of the public, were to be paid out of the public treasury. Moreover, as many of the warrants, surveys, and “other writings” made in pursuance of purchases and contracts with the proprietors had been deposited in the surveyor-general’s office as loose slips of paper, and had not been duly recorded, and as the secretary and surveyor-general were not under legal obligation to preserve them, by reason of which many papers had been lost or mislaid, the recorder with his clerks and deputies, was to have free access to all such “writings,” and any papers relating to them. The secretary and surveyor general also were commanded to deliver up the papers in their charge, under a penalty of £500 for every paper retained, concealed, or neglected to be given. When

¹ *Votes*, iv, p. 464.

they had been carefully numbered and set down in an inventory, they should be taken in small parcels to be recorded as speedily as might be, either by their being transcribed in the offices of the secretary and surveyor general, or, after removal, in the recorder's office, according as he should think fit. But in the latter case he should give receipts for the documents as denoted in the inventory. As soon as they had been recorded they should be returned to the proper office, under a penalty of £1,000.

Again, every warrant issued by the proprietary officers should be sent by the secretary to the recorder's office to be recorded before the land was surveyed or located, and the surveyor-general, or the deputy to whom the warrant was directed, within forty days after the request of the warrantee should make a survey according to the warrant, or forfeit £50. Whenever the tract had been properly surveyed and his fees paid, he should deliver a copy of the survey to the warrantee, and make a return with a map and other specifications into the surveyor-general's office under a penalty of £50. The surveyor-general on his part was to examine and correct them, and within twenty days send them to the recorder, also under a penalty of £50. John Hughes, an inveterate enemy of the proprietors, was appointed recorder, but in case of his inability to discharge the duties of the office, the act further directed that the provincial court should supply his place, until the assembly could appoint a successor. For the proper performance of his duties, however, he was directed to take an oath and to give bond for £1000, while the fees which he was entitled to receive for recording warrants, surveys, minutes of property, and "other writings" were specified.

The words of the act implied that a warrant and the return of the survey based on it constituted a complete title to an estate of inheritance in land. The proof of this appears in the declaration already mentioned, that land could be claimed and held under warrants, surveys, and "other writings." By the

general term "other writings," patents were evidently meant, though in reality these were the only legal conveyance of an estate from the proprietors to any grantee.¹ But in a message to the governor, the assembly asserted that a right to a piece of property was vested from the moment the warrant was issued. It stated also that with regard to matters of property the Penns should be considered as private individuals, and that since they were the landlords of whom the people held real estate, their interest was necessarily opposed to the popular welfare. It urged that many of the securities and evidences of the people's rights had been lost or destroyed, and that their lands had consequently been resold. The proposed act was therefore intended to secure the evidence and vouchers of their rights, which it did not appear safe to trust in the hands of proprietary officials. Thereby the laying of impositions by those officers on orphans, minors and persons beyond the sea would be prevented.²

When the act was laid before the Board of Trade, the opinion which that body expressed, was that it would establish a title to estates different from that which existed by common law. But this it thought would be unjust to the proprietors, since it seldom happened that, upon issuing a warrant of survey, the whole of the purchase money was paid down, and leniency in this matter was necessary in order that the purchaser might be left with sufficient to cultivate the lands. It is evident that, if the mere warrant and survey conveyed a right not simply conditional but fully available in law, the proprietors would have no remedy against the grantees by ejectment, and the persons holding title might alienate it, so that the proprietary title would cease with the absence of the person to whom the grant was originally made. The Board pointed out

¹ "The doctrine of the validity of a warrant and survey without a deed of purchase or a patent is not good in law, though possibly a warrant and survey on an 'old right' makes an equitable title." P. L. B., vi, T. P. to Peters, Jan. 12, 1760.

² *Votes*, v, pp. 66-67.

that this would cause the proprietors to grant no warrants till all the purchase money was paid in, which if rigidly observed would prove very disastrous to the province. On account of this and other objections it recommended to the Privy Council that the act be repealed, though it suggested the founding of an office of record.¹ But in spite of the repeal it was still the intention of the assembly to pass another act of a similar tenor. The proprietors acknowledged that many people in England looked upon the management of the land office as a secret "unfathomable as the Inquisition,"² but they directed Gov. Hamilton not to assent to any such act until it had received their approval, because "it was a matter concerning their private property, and such as they had a right to consider."³ The assembly did not offer the bill, since the proprietors had ordered the secretary's office to be made more public, and that any person should have the right to demand copies of papers necessary to substantiate legitimate claims.⁴ In 1765, they also directed their officers to discontinue the practice of opening and closing the land office at pleasure, for while "that might be done in a private gentleman's affairs, it was not proper for the proprietors of a province."⁵

It had been enacted by 7-8 William III, chap. 22, that no proprietor, without the king's license issued in council for that purpose, should sell or otherwise dispose of land to any but natural-born subjects of England. Still the practice of selling land to aliens continued to be very common in Pennsylvania. Moreover, land upon which no payments had been made was subject to forfeiture, and the property of intestate aliens legally escheated to the proprietor. One clause in the New-castle law of property, however, provided that the property of

¹ *Col. Rec.*, viii, pp. 539-540.

² Penn. MSS., T. P. to Peters, Nov. 15, 1760.

³ P. L. B., vii, T. P. to Hamilton, March 6, 1762.

⁴ *Ibid.*, vi, T. P. to Hamilton, Nov. 15, 1760.

⁵ *Ibid.*, T. P. to John Penn, Sept. 14, 1765.

every unnaturalized alien, whether testate or intestate, should regularly descend to his heirs as if he had been naturalized. But in 1706 the law was repealed, because, among other reasons, this clause was repugnant to the statute just mentioned. Another law, passed in 1705, provided that only in case an intestate had no kindred, should his real estate escheat to the immediate landlord of whom it was held, whether he was the proprietor, or merely the lord of a manor. Personal property however, was regularly to go to the proprietor alone.¹ This law also was repealed simultaneously with its predecessor. Thereupon, in 1708, many foreigners in the province, having been informed that their lands would escheat to the proprietor, were uneasy for want of assurance as to the validity of their titles.² But many of them were speedily naturalized by the legislature and the uneasiness ceased. But the question was revived in the act passed by the assembly in 1759, entitled, "An act for the relief of the heirs devisees, and assigns of aliens." It was declared void, however, by the king in council, because it deprived the proprietors of the right of escheat, and vested the lands in descendants of aliens precisely as it did in those of natural born subjects.³

It is true that Gov. Thomas in 1743 had been empowered to grant escheated land.⁴ About the same time the secretary was ordered to allow persons who gave notice of estates liable to escheat to have the preference in the ensuing sale, and, when the price had been fixed a proportionate deduction was to be made as an encouragement to such applications.⁵ But no complaints had arisen that such a power had been exercised. The custom therefore was on the proper request, to make out a new grant to such heirs or devisees, conformably with the

¹ Bradford, *Laws of Pa.*

² *Penn and Logan Corresp.*, ii, p. 278.

³ *Col. Rec.*, viii, pp. 545-6.

⁴ P. L. B., ii, T. P. to Thomas, Aug. 21, 1743.

⁵ *Ibid.*, T. P. to Peters, Feb. 25, and Aug. 22, 1743.

nature of the inheritance or the purpose of the devisee, without imposing any fine or drawing lucrative advantage of any kind from the transaction.¹ But in 1765 the proprietors directed the secretary to proceed by escheat against the estate of a certain intestate decedent. Thereupon the receiver-general applied to them for a grant of the property. They expressed their willingness to comply with the request, and asked the opinion of the provincial attorney general thereon. He must have believed it impracticable, for nothing further appears to have been done.²

Taking up now the history of legislative action regarding the quit-rents, the assembly in the memorable address of 1701 requested that the possessors of land might have the liberty of buying up their quit-rents, as Penn had formerly promised. He replied that if it should be his lot to lose his means of support he must depend on his rents, and therefore would not readily part with them. Many years also had elapsed since he made such an offer, and it had not been accepted. The assembly, however, alleged that originally an agreement had been made that the quit-rents should be paid to him on account of the great expense he would be at in the administration of government; and that he had sold lands for large sums, and had reserved sufficient to maintain himself or his deputy governor in a manner befitting their station.³ Again, in an address to Gov. Evans, May 21, 1705, it asserted that the quit-rent was designed solely for the support of government; that it was a contract between Penn and the purchasers, and that the people viewed it as a tax paid in consideration of a speedy confirmation of their lands. The governor replied that no trace could be found of any compact⁴ concerning a

¹ *Col. Rec.*, viii, pp. 545-6.

² P. L. B., viii, T. P. to Peters, Sept. 20, 1765; to Chew, April 1, 1766.

³ *Votes*, i, pt. i, pp. 146-149.

⁴ Belknap (*American Biography*, ii, p. 401), echoing Franklin (*Works*, iii, p. 123), says that Penn in distinguishing between the character of proprietor and that

release from quit rents, except as pretended in the memory of a few, and that really the government had nothing to do with the quit-rents. However, the contention that there was such a connection was persevered in even as late as 1764, and as often strenuously denied by the governors.¹

The assembly appears to have been somewhat inconsistent, because if the quit-rents had been intended to support a deputy governor, why should it have endeavored to buy them up?² The fact, moreover, that in 1683 it gave the proprietor the profits from a duty on liquors and other commodities, indicates that it was not intended to appropriate them for that purpose. Indeed, the claim of the assembly is not substantiated by any law, instrument, or act which was sanctioned by Penn or his successors.³

In 1705 the assembly, while still maintaining its contention over the quit-rents, agreed to pass an act for their easier and more effectual collection. It was stated in the preamble that ever since the first location of lands in the province, the quit-rent reserved had been irregularly collected, not only to the great loss of the proprietor, who thereby had been kept out of his just rights, but also to the great inconvenience of the owners of property, in that they had no certain or exact accounts of their indebtedness. Moreover, it was declared that upon the transference of lands encumbered with quit-rents, the arrears often became a total loss to the purchaser, and that on account of the people's negligence the quit-rents had been allowed to run so far in arrears that the payment of what might be easy if rendered yearly, became very

of governor, urged the necessity of supporting government with dignity, and that by complying with this expedient, the people would be freed from other taxes. But there is no proof that the proprietor ever made this statement.

¹ *Votes*, i, pt. ii, p. 41; *Col. Rec.*, ii, p. 419; Lloyd, *Vindication of the Legislative Power*; Speech of Joseph Galloway, 1764.

² P. L. B., iii, T. P. to Peters, Oct. 6, 1755.

³ Cadwallader, *Law of Ground Rents*, p. 45.

burdensome when paid all at one time. Therefore the receiver general and his deputies should open an office in the counties every March, and there receive the quit-rent from the freeholders, who, having been given ten days' notice, should appear personally or by representatives and pay the necessary amount. The sums paid and the lands on which they were paid, should be entered in a roll made for each county. A copy of this was to be kept in each town within the county, and to be open to the view of every person desiring it. Neglect to pay at the expiration of the ten days' notice warranted the receiver-general or the respective collectors to levy by distress, or the proprietor to bring an action for debt at the county court. Tenants from whom wheat was due should deliver a good merchantable article at a mill within a mile of navigable water, and the miller's receipt shown to the collector or receiver-general was to be accounted a sufficient payment. Furthermore, no person could be distrained or sued for rent till six months after the first demand, and he should have recourse to all the rent-rolls, books, and accounts of the receivers or collectors, for the purpose of proving any payments already made. In no case should the quit-rent be increased, but the sum first reserved must be continued; and no person, after giving the receiver or collector a proper account of what land he had alienated, and after the same had been entered on the roll, should be sued or distrained for rent at any rate higher than that which had been specified. No one should be obliged to pay quit-rent for such parts of his or her lands or lots as he or she might have conveyed to another, who resided upon land adjoining. No proportions or parts of quit-rent for lots or lands sold or otherwise alienated after 1706 were to be less than one shilling sterling for new tenants, and a bushel of wheat for old tenants. Upon alienations before 1706 the receiver could not be obliged to take less than three pence sterling, or a peck of wheat. The receiver-general or his deputies were also to enter on the respective rent rolls every

such alienation, and for the entry the purchaser from the original grantee should pay one shilling. Finally, the justices of the peace could grant writs of replevin returnable before a court of common pleas.¹

This proved of little avail, for complaints of mismanagement and extortion were unceasing. In 1725 it was stated that the first purchasers paid high prices for their lands, and were subject besides to the payment of a perpetual quit-rent which far exceeded what the proprietors of adjacent provinces required of their tenants; but in the land office at that time even higher rents were demanded.² The proprietary officers replied that in Maryland the first quit-rents were two shillings sterling, or twenty-four pounds of tobacco per hundred acres, and later four shillings on the same number. If there had been any relaxation, it was given for the consideration of three shillings per hhd. on tobacco shipped to England, which amounted to more than the Pennsylvania quit-rent. The purchase money was also paid in Maryland. In Virginia and New York, the quit-rent was two shillings six pence per hundred acres, and the charges of the grant frequently were equivalent to a purchase. In North and South Carolina the rate was one penny per acre, while in the Jerseys the whole country being sold off to certain purchasers, they could reserve no quit-rent to themselves, but for the lands granted before the sale about four shillings per hundred acres was the customary rate.³

The destitute circumstances of the young proprietors in 1732 made it imperative for them to advance the quit-rents. They also claimed that they should be paid in sterling, or at a corresponding rate in currency, especially since the assembly in 1729 had stated in its address to the Penns, "As the quit-rents are to be paid in English money, or the value thereof in coin current, it is our sense that an English shilling, the com-

¹ Bradford, *Laws of Pa.*

² Lloyd, *Vindication*, etc.

³ Logan, *The Antidote*, etc.

mon quit-rent for one hundred acres, cannot be otherwise discharged than by such a shilling, or its real value in coin current."¹ Notwithstanding this declaration the payment of the quit-rents in sterling was as much disputed as ever, and the assembly insisted on the proprietors receiving paper money at its face value; but, a compromise was effected by an act passed May 19, 1739. In the preamble of this, as of the preceding act, the statement was made that the quit-rents were greatly in arrears—a fact which, owing mostly to the tedious and expensive methods employed for their recovery, had proved a real loss to the proprietors, and had brought considerable trouble on the province. Moreover, it was asserted that the purchase of silver to pay them would involve hardship for the freeholders, and that payments in specie might depreciate the paper money. Hence the Penns for a period of ten years were to be given £130 annually, in addition to a lump sum of £1200 from the interest on the paper money, provided they would agree to take currency instead of sterling. The currency was rated according to the "proclamation money" of 6 Anne chap. 39, and was to be used in the payment of quit-rents upon all grants made prior to 1732; but payments on later sales should be governed according to the terms of each transaction, as expressed in the patent. The method of collecting the quit-rent was then carefully specified.² But the assembly never fully executed the compromise.³

This completes the history of the land system so far as the assembly had any direct connection with it. We are now ready to consider, finally, the regulations of 1765, and the schemes of the land speculators. It has been noticed that the proprietors were unable to prevent the occupation of lands on the frontier by squatters, and that toward the middle of the eighteenth century the evil developed with alarming rapidity. Moreover, deputy surveyors and land speculators often sur-

¹ *Votes*, iii, p. 336.

² Franklin, *Laws of Pa.*

³ *Col. Rec.*, viii, 537.

veyed land for themselves and their friends. Sometimes they did this under assumed names, without a warrant from the land office, and on the pretense that the land had already been appropriated. But it often happened that other persons had previously found that the land was vacant. Hence these proceedings of the surveyors and speculators made it difficult for the settlers to get their land surveyed till the speculators had been satisfied. Again, even in cases where a warrant had been regularly issued,¹ unless the tract was accurately described, they would frequently keep the choice portions for the same purpose.²

It was to check such evils that the proprietors directed new regulations for the land office to be issued, June 17, 1765, and what was known as the "application system" was put into operation. Instead of granting a warrant immediately, the name of the applicant for any tract of land, the date of the application, and the description of the land sought was entered first in the day book, as it was called, and then in the warrant book.³ Not more than three hundred acres should be granted to a single person without a special order from the proprietors. These tracts should be surveyed in each county. Within six months the survey was to be returned to the surveyor-general's office. Then a warrant should be sent from the secretary's office to the surveyor-general, ordering him to accept the survey and file a certificate of its return with the secretary. Within six months after the date of the return the applicant

¹ It may be said, however, that legitimate surveys were occasionally made without any actual warrant or order from the land office. This gave rise about 1760 to what was called a "warrant of acceptance," which stated that by consent of the land officers a survey had been made, and that the survey was now to be accepted. Smith, *Laws of Pa.*, ii, p. 147.

² P. L. B., vii, T. P. to Peters, Aug. 10, 1763; viii, to John Penn, Feb. 10, 1764; and to Peters, June 8, 1764.

³ In September 1769, applications, as such, ceased, and applications on which warrants were to be issued were received and warrants issued thereon. Huston, *Original Titles*, etc., p. 323.

should make full payment for the land to the receiver-general, at the rate of £5 sterling per hundred acres or its equivalent in currency. Interest also should be paid from a date six months after the application to the time of payment. But to guard against fictitious applications, *i. e.*, applications for land to be held for speculative purposes, a clause was to be inserted in the warrant requiring *bona fide* settlement as a condition of its validity. Again, owing to the dilatory practices of the surveyors and to the failure of the the applicants to attend them at the proper time and place, many warrants issued several years previous were still in the secretary's office. Hence they were to be sent to the surveyor-general in order that the proper return of the surveys should be made. Moreover, as the purchase money in many parts of the province remained unpaid, thereby creating many intricacies in claims, the possessors were required to take out patents for lands long previously surveyed. All who claimed land on account of settlement or improvement must make application to the land office, and bring authentic certificates from some neighboring magistrate of the nature of such improvements, otherwise the land would be regranted. Neither were improvements to be bought and sold without a warrant specially issued for that purpose. The deputy surveyors were also forbidden to buy them, to receive applications for land, to survey any tracts without orders from the surveyor-general, or to continue their irregular practices.¹

Examining now more in detail the schemes of the land speculators, we find that, notwithstanding these regulations, the attention of the proprietors was called to the fact that men of this class continued to make large surveys in localities most suitable for immediate settlement.² Complaints soon spread

¹ P. L. B., viii, T. P. to Peters, Sept. 20, 1765, and to Physick, Sept. 22, 1765; ix, to Tilghman, Nov. 7, 1766, and to John Penn, Aug. 5, 1767; Smith, *Laws of Pa.*, ii, p. 160 *et seq.*; *Col. Rec.*, ix, p. 381.

² Penn-Physick MSS., iii, E. Physick to T. P., Apr. 10, 1769; *Ibid.*, *Private Corresp.*, v, Richard Penn to T. P., Aug. 14, 1770.

that these were just the lands wanted for immediate occupation. It was clear that the toleration of such monopolies was unwise, as the frontiersmen for fear of the Indians did not care to live in scattered groups, especially when the rest of the country was so inhospitable. On the other hand it was believed by many persons in the province that the proprietors themselves were accustomed to hold large tracts of land on the frontier until fabulous prices could be secured. But this was a fancied rather than a real grievance, for, whatever the truth of the matter might be, the actual effect was not injurious. The proprietors were generally opposed to land speculation, and in fact refused several liberal offers to purchase town squares and other property. Their motive in the refusal was naturally private advantage, because they were as much entitled to the unearned increment as the people of the province. But though the people were unwilling that the proprietors should commit such a grievous injustice as to hold lands for a rise in value, they were themselves not averse to land speculation.

This was clearly shown in the propositions made by the officers of a provincial organization called the Pennsylvania Regiment. They formed an association for the purpose of applying to the proprietors for a large tract of land upon which they might erect a town. Each member should have a plantation according to his rank and to the subscription which he had made toward the capital stock. They desired 40,000 acres, 38,000 of which should be on the west branch of the Susquehanna, and 2,000 acres at Shamokin. For this reason they requested the proprietors to make another purchase from the Indians, and to grant them the territory on low terms and on condition of their properly defending it. But the Penns refused to entertain the proposition, on the ground that they had no right to establish a tenure by military service. They also did not care to plan any settlement before the Indians had sold the land.¹ Then the officers told the proprie-

¹ P. L. B., viii, T. P. to John Penn, July 6, 1765.

tors that they were willing to take the land on such terms of sale, and on such conditions of settlement, as might be for the public good, and advantageous to the proprietors, but on account of the military service they had rendered, and their offer to settle the land immediately, they desired terms more favorable than were usually made when common land was granted. The governor, therefore, acting in behalf of the proprietors, offered to make such a grant out of the next purchase from the Indians, the proprietary tenth of course being first surveyed. At the same time he stated that £5 currency per hundred acres must be paid on issuing the order for a survey, and whatever in addition was necessary to make £5 sterling must be paid when the patent was received. The usual quit-rent of one penny per acre, and immediate settlement by families were also demanded.¹

The negotiations continued till 1769, when the proprietors agreed to grant 24,000 acres in lots of 8,000 acres each, situated on the west branch of the Susquehanna.² The stipulations were that the whole of the purchase money on the terms just mentioned should be paid before any patents were issued, and that each tract of 300 acres should be settled by a family within two years from the time of survey. Various caveats were then entered at the land office by persons who for the improvements they had made claimed a right of pre-emption to the lands in question, but these claims were not allowed by the board of property. The officers, however, were dilatory in their payments and slow in taking out their patents. Hence the whole scheme failed of realization.³

It was fortunate that such land-jobbing enterprises were frustrated. In fact the retention of control by the proprietors over the land tended to the advantage of the people be-

¹ P. L. B., viii, T. P. to John Penn, Dec. 14, 1765, to Allen Dec. 15, 1765; to Hockley, Apr. 2, 1766; ix, to Peters, Aug. 6, 1766.

² *Ibid.*, x, T. P. to Physick, May 12, 1769.

³ Call, *Pa. Hist. Soc.*, i, no. 2, pp. 94-102 *et seq.*

cause, owing to the lack of sympathetic assistance from the colonists, they were often incapable of enforcing even their legal rights. A Pennsylvanian might succeed in establishing a monopoly. An Englishman three thousand miles away, and possessing but little real power, was not greatly to be feared. The state subsequently erected was the gainer by the proprietary policy.

CHAPTER IV

INCIDENTAL PROPRIETARY RIGHTS

IN addition to the territorial possessions conferred by the charter, certain privileges which were inherent in the nature of a proprietorship, as derived from or analogous to the feudal powers formerly held by the counts palatine, were also bestowed upon Penn. The right to receive profits from exports and imports is distinctly mentioned in the charter as belonging to the proprietor, but they should be assessed by him with the coöperation of the assembly. The other rights were of course incidental to his feudal authority. They were mainly small rents and perquisites customarily given to the governor as part of his salary. They consisted of licenses, fees, fines and forfeitures, as well as the rent from ferries, and income from official patronage.¹ William Penn claimed also the right to strays, escheats, deodands, and the right to erect windmills.²

¹ The perquisites had become so large in 1765, that the proprietors believed they were sufficient to support the governor without any salary from the assembly. P. L. B., viii, T. P. to John Penn, July 6, 1765.

² The duty of seizing stray animals, particularly horses, was entrusted to the proprietary rangers appointed in each county. The animals were sold at auction, and a portion of the proceeds paid to the receiver general. In 1717 the powers of those officers were temporarily extended to "ranging and keeping the marches of the province" and the Lower Counties secure against invaders from Maryland and elsewhere. Rangers were also employed occasionally as stewards to supervise the tenants on manors. The other rights were never exercised. *Col. Rec.*, i, p. 438; iii, p. 37; Bradford, *Laws of Pa.*; Huston, *Original Land Titles*, etc., p. 80 *et seq.*; *Penn and Logan Corresp.*, i, p. 59; P. L. B., iii, T. P. to Hamilton, Aug. 27, 1750.

Finally profits of certain markets and stalls were in some cases reserved to the proprietors.¹

In 1684 the assembly granted Penn an excise tax and an impost on exports and imports. After that body had passed a resolution that the government should be supported by the inhabitants, the law was enacted as a testimonial of the gratitude and affection of the inhabitants to the proprietor "for his great care, charge, and liberality" toward them. These perquisites were recoverable by process similar to an action for debt, and one-third of all forfeitures was also reserved to the proprietor.² Penn and the council now conferred with certain individuals about an easy method of collecting the tax, but they being interested in the sale of liquors, sent a message to him declaring that the law could not be executed without great difficulty and expense. On condition that no attempt should be made to enforce it, they even offered to raise by voluntary subscriptions a sum of £500 or more for the support of the government. In order that the industry of the province might not be retarded, Penn and the council agreed to this proposition, and the subscription commenced. "But some of the collectors were strangers and had little influence, others were a little too great to be much imposed upon, many were sick, and still others preferred their own ease to the public good."³

After Penn had returned to England in 1684 the members of the council, the "the great and rich men," proved to be not only unwilling to contribute their share, pleading exemption on the ground of their public services,⁴ but were dila-

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, Apr. 2, 1747; P. L. B., viii, T. P. to John Penn, Dec. 14, 1765; x, to Richard Penn, Apr. 30, 1772.

² *Votes*, i, pt. i, p. 28; *Charter and Laws of Pa.*, p. 138.

³ Penn MSS., Ford vs. Penn: "A True and Full Narrative of the Beginning, Progress, and Conclusion of the Voluntary Contribution for the Maintenance of Government, in Lieu of the Act of Excise imposed upon strong Liquors."

⁴ Inasmuch as each member of the council received three shillings sixpence a day for his services, and two pence a mile for his travelling expenses, the desire for exemption had a selfish aspect. *Charter and Laws of Pa.*, p. 147.

tory in furthering the collection.¹ Only a few spasmodic efforts were made in response to the proprietor's repeated and urgent requests to hasten the payments. His agent, Markham, sent a memorial to them with a reminder of their duty in the matter, at the same time calling attention to the erroneous idea, then prevalent, that the proprietor was wealthy and could afford to support his government. The council replied to the memorial by assenting to the repeal of the law. Of this Penn bitterly complained, but without avail.² In 1700 however, after he had repeatedly asked the assembly to recall the fact that he had received no public support for nearly twenty years, a law similar to the one passed in 1683 was enacted. But this speedily aroused opposition, and the assembly repented of its generosity. Then he offered to repeal the law if the assembly would give him an equivalent, but this proposition was not accepted. The next year Penn left the province for the second time, but it appears that the revenue arising under the act, so far as collected, was paid into the public treasury.

Fines and forfeitures were also the property of Penn and his heirs. But from the very outset only portions of these were given to them. In the majority of cases they were reserved by law for the support of the poor, the repair of roads and bridges, the payment of judges' salaries, and other county expenses. Penn complained frequently that even such fines and forfeitures as the assembly had allowed him were grudgingly paid, if paid at all.³ After his private affairs had become involved however the custom arose of paying fines and forfeitures to the governor, unless otherwise reserved.

¹ "Thomas Lloyd took it ill that the collectors should desire the council to subscribe after the multitude." Penn MSS., Ford *vs.* Penn.

² "I too mournfully remember how noble a law I had of exports and imports. * * * But Thomas Lloyd * * * complemented some few selfish spirits with the repeal thereof. * * * That has been the source of all my loads and liabilities to support myself, under the troubles that have occurred to me, on account of settling and maintaining the colony." Penn and Logan *Corresp.*, ii, p. 70.

³ Penn and Logan *Corresp.*, ii, pp. 236, 291.

So far as tavern licenses were concerned, Penn was very willing that the county courts should have the power, if not of actually issuing the licenses,¹ at least of recommending to the governor the names of those to whom they should be granted.² The rates were early fixed by law, and the licenses themselves were issued by the governor, on the recommendation of the justices or of the mayor's court of Philadelphia.³ But as the population increased, it was occasionally found expedient for the justices in the frontier counties to issue licenses, the proceeds of which formed a portion of the county revenue. Toward the middle of the eighteenth century the claim was made that licenses were a gift from the people to the governors. It was also said that the justices in order to make a return to the governor, for continuing them in office, often recommended persons simply because they were agreeable to them. For these reasons it was urged that the governor should be excluded from any share in issuing such licenses. It was even insinuated that the proprietors connived at the practice in order to share the profits with the governor.⁴ A conference was therefore held in London in 1765 between the proprietors and representatives of the assembly, the re-

¹ "That no person within this government shall be licensed by the governor to keep ordinary, tavern, or house of public entertainment, but such who are first recommended to him under the hand of the justices of the respective counties, signed in open court, which justices are and hereby shall be empowered to suppress and forbid any person keeping such public house upon their misbehaviour, on such penalties as the law doth or shall direct, and to recommend others from time to time as they shall see occasion." *Charter of Privileges, 1701*; *Col. Rec.*, II, p. 59.

² *Col. Rec.*, i, p. 529; *Penn and Logan Corresp.*, ii, p. 246.

³ Acts passed in 1700, 1710, 1718, and 1721, provide that the justices should have the power of recommendation, as well as of fixing tavern rates; and regulated the fees for licenses.

⁴ *Votes*, v, p. 337: "I join with you," wrote Thomas Penn to Gov. Hamilton, Aug. 10, 1763, "that public houses ought not to be unnecessarily increased, but I think the people had as great inclination to distress a governor as to preserve the morals of the people, and as this is so large a perquisite of government, it ought to be closely attended to." P. L. B., vii.

sult of which was that the former agreed to allow the grand juries to recommend to the justices the granting of licenses, and they in turn to the governor. But a few months later the governor was ordered not to depart from the old method, lest thereby he should give up any of the rights of government. The proprietors offered, however, to exchange their rights to grant licenses for a lump sum to be paid annually to the governor, but to this the assembly would not consent.¹

Fees were early regulated by the assembly, though as in other provinces it was contended that the right to do this was vested exclusively in the governor and council.² But, in spite of objections from the council the assembly established its claim to settle fees, even extending it to the private affairs of the proprietors insomuch that its reduction of fees at different times caused several protests and resignations.³

Finally, the proprietary claim to ferries was disputed. The more correct interpretation of the words of the letters patent conveying absolute ownership of the rivers is that the proprietors had the legal right to establish ferries, and to receive the profits therefrom. This view is further strengthened by the fact that they represented the crown. By the common law no one could establish a ferry without prescription or a charter from the crown. Ferries were franchises granted by the crown, and mere riparian possession did not necessarily entitle the possessor to a franchise.⁴ The establishment of ferries was, therefore, a royalty belonging to the proprietor irrespective of any act of the provincial legislature. But the assembly in 1693 took a different view. It expressed the

¹ Penn MSS., *Private Corresp.*, v, Richard Penn to T. P., Feb. 11, 1765; P. L. B., viii, T. P. to John Penn, July 6 and Nov. 30, 1765.

² *Col. Rec.*, i, p. 471; ii, p. 53; *Votes*, ii, p. 55.

³ *Votes*, ii, pp. 400, 439; *Col. Rec.*, v, p. 578; Penn MSS., *Offic. Corresp.*, i, S. Clement to J. Logan, May 30, 1720.

⁴ *Amer. and Eng. Cycl. of Law*, vii, p. 941, and cases cited.

idea that the establishment of ferries was a duty of the governor and council. Fletcher, the royal governor, stated that he believed it was a royalty granted to the proprietor, and expressed surprise that the assembly should be desirous of abridging his rights. He then referred the matter to the commissioners of property, and with their acquiescence issued a proclamation prohibiting all persons from plying any ferry within a certain distance from the proprietary ferries. The assembly, however, had some ground for its claim, because Penn in 1684 had assented to an act establishing certain ferries at the expense of the counties wherein they were situated. The rates of ferriage were fixed by this act, and it was provided that the profits should be paid into the county treasury. But in case private parties were willing to maintain a ferry at specified localities they might receive the profits.¹ This was perhaps an unfortunate concession by the proprietor, but his presence in Pennsylvania at that time was sufficient to protect him against the immediate loss of any rights in consequence of it. In 1696 Gov. Markham and the council ordered a ferry to be established on condition that the ferryman should give security to the proprietary officers for the proper performance of his duties.² Indeed several acts of this description were passed in 1700 and 1701, but chiefly to regulate the rates of ferries.³ During Gov. Keith's administration, 1716-1726, seven acts were passed, either giving certain specified persons the right to establish a ferry, or allowing the county court to lease it out. The ferrymen were amenable to the county court, the rates of ferriage were regulated, and the proceeds were turned into the county treasury, or given to the tenants of the ferry.⁴ The assembly also in 1736 resolved that the

¹*Charter and Laws of Pa.*, p. 137.

²*Col. Rec.*, i, p. 514.

³Bradford, *Laws of Pa.*

⁴One feature of the policy of the English government was to restrict the passage of private acts by the colonial legislatures. In accordance with this, an instruction had been issued by the lords justices to Keith, July 23, 1723, that he should with-

granting by the proprietors of licenses to keep ferries and to regulate the rates of ferriage without the concurrence of the legislature, was prejudicial to the general interests of the province. The Penns under protest agreed that the rates should continue to be determined by the legislature, and that no ferries should be established except where the county court or highway commissioners might see fit to recommend them¹.

hold his consent to any private act, until proof was submitted to him in council that publication had been made of the parties' intention to apply for such an act. *Votes* ii, p. 394. In spite of this instruction, Keith passed the bills for establishing ferries.

¹ *Votes*, III., pp. 249-251. From the appointment of Gov. Thomas in 1741 as the official head of the land office, the governors were entrusted with the power of granting licenses for ferries.

CHAPTER V

THE DIVESTMENT ACT

FROM an early date the wildest ideas prevailed in Pennsylvania concerning the wealth of the proprietors.¹ It was estimated by some that their income from the province amounted to £100,000 per year, and that the value of their estates there exceeded £10,000,000 sterling. Upon this subject the imagination of Benjamin Franklin ran riot when he gave the authority of his name to the document, which as it appears in the appendix to his "Historical Review of the Constitution and Government of Pennsylvania" purports to be based on Thomas Penn's estimate of the value of the proprietary estates. No authentic document of this origin or nature is known to exist. Prolonged and careful research among the Penn Manuscripts has revealed but one direct reference to Franklin's conclusion as based thereon, and that a declaration by the proprietor whose name is attached to it, that its contents and conclusions were false. "It is quite impossible," wrote Thomas Penn, May 18, 1767, to Mr. Peters, the former secretary of the land

¹ "People imagine because we are at the head of a large province we must be rich; but I tell you that for fifteen years, from 1732 to 1747, I laid by about £100 a year." P. L. B., ii, T. P. to Peters, Oct. 9, 1749.

It must be remembered that the proprietors were subjected to an enormous expense during the continuance of the litigation with Lord Baltimore. Several officers of the province, as the registers general of the counties and the naval officers of the port of Philadelphia, whose salaries aggregated at least £1600 per annum, were also paid by them. Indeed, not till late in the history of the province were their revenues very large. *Ibid.*, vi, T. P. to Hamilton, Oct. 18, 1760; x, T. P. to Hockley, Dec. 1, 1773; Penn MSS., *Pennsylvania Land Grants*.

office, "that Mr. Franklin's accounts can have any foundation."¹

Dr. Franklin was undoubtedly well acquainted with the general procedure of the land office, and to this fact may be ascribed the plausibility of his carefully elaborated estimate. But it is not at all likely that his statements were drawn from authoritative sources. He was not on good terms with the proprietary officers, while his dislike of the Penns and their cordial dislike of him are only too well known.² Hence both the proprietors and their officers would never furnish him with any detailed estimate of their property, because he might use it for a sinister purpose. Wherever he derived his information, whether from his own imagination or partly from the imagination of others, it must be regarded as the expression of an opinion based on prejudice and not on facts.

Having thus indicated from one point of view the unreliability of Dr. Franklin's estimate, let us consider it from another. The "Pennsylvania Land Grants" give an early account of lands disposed of by the commissioners of property in the province and the Lower Counties. Herein it appears that previous to 1712, 91,000 acres were sold at prices ranging

¹ "Mr. Franklin has published a book containing many gross falsehoods." P. L. B., vi, T. P. to Hockley, Sept. 21, 1759.

² Dr. Franklin's conference with Thomas Penn in 1758 shows his feeling toward that proprietor. Speaking of Thomas Penn's remarks about his father's charter of privileges, Franklin wrote: "He said that with a kind of triumphing, laughing insolence, such as a low jockey might do when a purchaser complained that he had cheated him in a horse. I was astonished to see him thus meanly give up his father's character; and conceived at that moment a more cordial and thorough contempt for him than I ever before felt for any man living, a contempt that I cannot express in words." *Shippen Papers*, p. 111. On the other hand, the attitude of the proprietors toward Franklin is well illustrated in a letter written by John Penn, while governor of the province, to Thomas Penn, his uncle, and dated May 5, 1764. He wrote: "There will never be any prospect of ease and happiness while that villain (Franklin) has the liberty of spreading about the poison of that inveterate malice and ill nature which is deeply implanted in his own black heart."

from £5 to £130 per hundred acres. The total amount received from sales previous to the above mentioned date was £10,640. Furthermore, from entries and accounts in the secretary's office, and from abstracts of warrants for taking up lands issued between 1681 and 1756, and deposited with the surveyor-general, it was estimated that 2,544,040 acres were laid out, exclusive of 253,505 acres for the proprietary family, and 80,000 acres for various companies. On the total amount the quit-rents were valued at £3307, 16 s, 2d.¹ Again, in 1757, John Penn, grandson of the first proprietor, attested the following statement: 307,795 acres had been granted since his arrival, a short time previous. Upon this the purchase money at the rate of £15. 10 s. per hundred acres, amounted to £47,709. But of this sum only about £6,527 had been paid, while about £197,193. 10 s. was still due from the province in rent and purchase money, and £31,813 from the Lower Counties. To the government and escheated lands no value was assigned, nor were the bank lots included. The total value of the estate was estimated at £3,806,012.²

Though some small returns were made to the proprietors during the Revolution, the land office was practically closed from 1775 to 1781, when it was formally reopened under authority of the state. It was natural also that the difficulties connected with the settlement of the estate of Thomas Penn should prevent the disposal of land on any large scale. The sales of land and balances due on contracts already made, which could not readily be perfected by patent, however, were the principal sources of the proprietary revenues at that time. Compared with this the quit-rents on the patented lands, being all that could be legally recovered by distraint, were of no great importance. It appears probable that the total yearly amount of quit-rent in the province, as reckoned in 1775, was £3,470 sterling.³

¹ Penn MSS, *Pennsylvania Land Grants*.

² *Ibid.*

³ Penn-Physick MSS., iii, E. Physick to Juliana Penn, Nov. 30, 1775, and May 28, 1778.

But additional evidence on this point appears in connection with the history of the divestment act. We find that when the supreme executive council and the assembly elected under the constitution of the commonwealth came into power, the friends and the officers of the proprietors saw only too clearly that confiscation loomed threateningly before them. In 1778 laws were enacted making £155 continental money a tender for £100 sterling, disabling any person who would not take an oath of fidelity to the state from selling land or suing for a debt, and compelling all persons who held offices by commissions under authority of the crown or of the proprietors to take the oath at once, or forfeit their real and personal estates.

Now Edmund Physick had been for thirty-three years in close connection with the land office. At the time of which we are speaking, he was receiver general. By long experience then he was eminently fitted to speak with authority concerning the proprietary estates and income. In compliance with the request of the proprietors, and fearing lest from the lack of proper knowledge on this subject, the legislature might pass an act for the confiscation of the proprietary estate which would be too sweeping in its provisions, he prepared the "Pennsylvania Cash Accounts," which is a summary extracted from the various journals of property, of the amount of the proprietary estates and the grants and revenues therefrom, principally between the years 1701 and 1778. Prior to 1700 no regular accounts were kept. The "Cash Accounts," together with a deposition sworn to before the chief justice of the commonwealth are the authority for the following statements. It is believed to be sufficient to give a fairly accurate view of the grants and receipts. At the outset it is necessary to state that from the government, from escheated lands, from the three-fifths of gold and silver ores and the one-fifth of other ores, no income of practical importance was realized. From different surveys and computations it was estimated that the proprietary estates, exclusive of the Lower Counties, included 27,955,200

acres. The amount of land given, granted, and appropriated between 1681 and 1776, including the proportions allowed for roads, bestowed upon members of the family, and the like, was 6,363,072 acres, leaving thus 21,592,128 acres from which the proprietors never received any return. In fact, just before the war several thousand acres were sold nominally for large sums, but of these nothing was ever paid. The gross sum of money received for lands from 1701 to 1778 was £688,486, exclusive of that which since 1757 was received for manor lands. The quit-rent reserved during this period amounted to £182,248-12s. 10d. sterling. But of this only £63,679 8s. 3d. had been received, leaving £118,569 4s. 7d. still due. In 1732 the annual quit-rents and profits amounted to £567 7s. 2d.; in 1769, to £4,595 13s. 7d., and in 1776, to £10,204 os. 7d. The profits and emoluments arising from royalties, patronage, and appointments to office never exceeded £6,000 sterling per annum, and that sum was reached only very late in the history of the province. In 1776 common lands were usually granted at the rate of £10 per hundred acres, £5 for purchase money and £5 in lieu of one penny sterling quit-rent. It is thus seen that the quit-rents were not compounded for until the outbreak of the Revolution, though the fact that they were so scanty, had been urged before as a good reason for compromise. If the 21,592,128 acres for which nothing had been received, had been sold at £10 per hundred acres, £2,159,212 14s. would have been realized.

A comparison of this summary with the one given by Franklin will further disclose the unreliability of the latter. But such a comparison is useless, because the "Historical Review,"¹

¹ Many of the statements contained in the "Historical Review" have been repeated by later writers, who have not taken the trouble to examine their accuracy. In fact, this work of Franklin has been often quoted as a marvel of correctness, but a critical investigation of it will show that it is the production of a partisan. The partisan character of the book is constantly shown by the strain of argument, as well as by the cutting sneers and sly innuendos. Franklin describes a series of wrongs and outrages on popular liberty which are quite dreadful to contem-

whether actually written by Franklin or not, was edited and expressly promulgated by him to serve a partisan purpose.¹ Though it might be urged that Physick's account is partial, yet, if so, the inaccuracy of Franklin's assertions is the more clearly established from the fact that it was Physick's interest to magnify the value of the estate as much as possible, in order to induce the commonwealth to grant a more liberal allowance.

Early in 1779 a committee was appointed by the assembly to examine the claims of the proprietors, to report "wherein they were incompatible with the happiness, liberty, and safety

plate. By this means he hoped to arouse feelings of hostility toward the sons of William Penn, and to destroy respect for the founder of Pennsylvania himself. In the preparation of this work further, certainly until the time when he became personally interested in the politics of Pennsylvania, practically the only authority upon which Franklin relied was the "Votes" or proceedings of the provincial assembly. Even then he was very careful to select for his work only the instances of complaint and invective which were uttered when the assembly felt itself aggrieved. He studiously avoided the cases and there are many of them where the assembly spoke kindly or even gratefully of William Penn or his sons. See *Votes*, i, pt. i, pp. 6, 9, 12, 13, 21, 23, 35, 36, 143, 144; iii, pp. 130, 182, 221, 436; iv, pp. 54, 61. *Col. Rec.*, iii, p. 611. After the death of William Penn, moreover, the following testimonial was drawn and signed by a large number of Quakers. Among those who signed it was *Penn's former arch enemy, David Lloyd*. It ran as follows: "It becomes us particularly to say that as he was our governor he merited from us love and true honor, and we cannot but have the same regard to his memory when we consider the blessings and ease we have enjoyed under his government, and are rightly sensible of his care, affection, and regard always shewn with anxious concern for the safety and prosperity of the people, who many of them removed from comfortable livings to be adventurers with him, not so much with views of better acquisitions or greater riches, but the laudable prospect of retired quiet habitations for themselves and posterity, and the promotion of truth and virtue in the earth."—Penn MSS. *Phila. Land Grants*. The "Historical Review," presenting as it does but one side of the subject, is therefore entitled to little regard as an authentic history of Pennsylvania.

¹ In the manuscript "*Franklin Papers*" is the following account, dated Dec. 31, 1759: "Printed for Benj. Franklin by Wm. Strahan—

Review of the Constitution of Pennsylvania

118 reams of paper for do.

Paid for binding 600 Reviews, and shipping

of the state, and to prepare and offer to the house for consideration suitable resolutions to remedy the evils arising from such claims." The supporters of the proprietor immediately retained the services of the two noted lawyers who appeared before the assembly on behalf of the Penns. The committee summoned Physick and examined his accounts. Thereupon in April, 1779, it reported that, the charter of Charles II being made as well for the enlargement of the English empire, the promotion of trade, the advancement of civil society, and the propagation of the gospel, as for the particular benefit of William Penn and his heirs, it was to be considered as a public trust for the advantage of those who settled in Pennsylvania, coupled with a particular interest accruing to William Penn and his heirs, but in nature and essence subordinate to the great and general purposes of society. Again, by the "Conditions and Concessions," such a portion of the land as was not reserved in the form of manors was held in trust by the proprietors for the people, and the proprietors by imposing quit-rent and terms for the payment of money (except on manors), had violated the concessions on which the people of Pennsylvania were induced to become settlers, usurped a power inconsistent with their own original conditions, and defrauded the settlers of large sums of money.

It was deemed advisable, however, to secure the opinion of Chief Justice McKean on the following points: Whether Charles II had the authority to convey the land to Penn; whether Penn's grant was absolute, or whether he and his heirs were trustees for the people; whether the "Conditions and Concessions" affected only the first purchasers; and whether quit-rents were intended for the support of government, or were they reservations arising from the nature of the estate. The chief justice declared as his opinion that Charles II had sufficient authority to make the grant; that the grant was absolute to William Penn and his heirs, but that the interest of the grantee and his heirs was so connected with the settlement of

the province that the former could not be promoted without the latter. He believed, moreover, that the "Conditions and Concessions" were confined to the purchasers of that time as the words "agreed upon by the proprietary and governor, and those who are the adventurers," fully indicated.¹ In answer to the last question the chief justice observed that, although several assemblies stated that quit-rents were reserved for the support of government, yet this was not evidenced by any law, act or instrument in writing which had been assented to by William Penn or his heirs, for nothing of the sort was mentioned in any of the deeds or patents wherein they were reserved. They had furthermore never been applied to that use, but had been reserved as private property.² In consideration of the fact that the quit-rents had been appropriated for private use by all other proprietors under similar charters, they were to be viewed as reservations arising from the nature of the estate which William Penn had in the soil, and which he as mesne lord could legally reserve.³

With its revolutionary ideas somewhat modified by this conservative judicial opinion, the committee finally reported in favor of confiscation, but with certain reservations. This report was embodied in the divestment act of November 27, 1779, vesting the estates of the proprietors in the commonwealth.⁴ By the eighth section of this act the private estates and proprietary tenths or manors of which surveys had been returned to the land office before July 4, 1776,⁵ together with

¹ 2 *Binney's Reports*, pp. 476-486.

² Since practically all of Penn's receipts during his financial troubles were from quit-rents in Pennsylvania, there is some evidence that, until the assembly made provision for the governor's support, the salary of that official was paid, at least in part, from the quit rents. *Penn and Logan Corresp.*, ii, pp. 191, 236, 264, 285, 291.

³ Hazard, *Reg. of Pa.*, x, pp. 113-115. ⁴ Smith, *Laws of Pa.*, ii, p. 258 *et seq.*

⁵ It would appear then that what was not held by the Penns in their private several right was public property, *i. e.*, simply the mesnality was extinguished. *U. S. vs. Repentigny*, 5 Wallace, pp. 211, 267.

the quit-rent and other rents and arrears of rents reserved out of the said tenths or manors, should be confirmed to their owners. By the ninth section the quit-rents and arrears, except as above, were declared void ; while it was provided that arrears in purchase money should be payable to the commonwealth. By the fourteenth section it was enacted that £130,000 should be given to the claimants and legatees of Thomas and Richard Penn, "in remembrance of the enterprising spirit of the founder, and of the expectations and dependence of his descendants." This amount was to be payable in sums of not more than £20,000 or less than £15,000 sterling in any one year, the first installment to be paid at the expiration of a year after the war. By an act of April 1, 1784, the barracks in the northern liberties were directed to be sold by the supreme executive council for the purpose of raising a fund to pay the first installment. In February 1785 this body was ordered to draw warrants on the treasurer for the amount. In case the proceeds arising from the disposal of the barracks were not sufficient to pay such warrants, the deficiency was to be supplied from the impost, the rate of exchange being specified. By subsequent acts an interest of 6 per cent was allowed on installments in arrears. Finally, the law of April 9, 1791 provided for adjustment and full discharge of the debt.¹

The larger part of what remains of the old Penn manors at the present time is in and around Wilkesbarre. The principal properties in the centre of the state are in Luzerne County, a remnant of an estate in Sunbury Manor, embracing about 1500 acres ; a tract of land in Plymouth township ; some woodlands and several small tracts in Salem township, from which no revenue is derived ; some reserved mineral rights in different parts of Pennsylvania ; and a tract of 1,000 acres along Harvey Creek in Jackson township. The property in Philadelphia belonging to the Penn estate consists of about three dozen ground rents in what was the manor of Springetts-

¹ Dallas, *Laws of Pennsylvania*, ii, pp. 205, 240, 512 ; iii, p. 67.

bury, adjoining the city on the north, and one irredeemable ground rent on improved property in Race Street near Twenty-first. With some reversionary rights in property which had been granted by the first proprietor for public buildings, this is the sum total now in existence of the possessions of the Penns. The quit-rents in the proprietary reservations continued until cancelled by cash payment. In addition to the above compensation from the commonwealth, parliament in 1790 granted an annuity of £4,000 to the oldest male descendant of William Penn by his second wife; and certain sinecure offices for a time were bestowed on other members of the family. This amount was regularly paid to the heirs till a few years ago, when Lord Salisbury was prime minister. The attacks of the Radicals upon this class of annuity grants resulted in its cessation. The annuity was thereupon compounded for at its value for about twenty-five years. With this recompense it was considered that the crown had done its duty by the memory of its illustrious subject.¹

¹ Art. in *Philadelphia Press*, Oct. 28, 1894.

CHAPTER VI

INDIAN AFFAIRS

It would be a matter of considerable difficulty to state with exactness the names and location of the various Indian tribes which inhabited Pennsylvania during the provincial period. The powerful confederacy of the Six Nations claimed rights of ownership to the greater part of the territory. Its war parties occasionally made their way through the forests to battle with the southern Indians, but as a rule their attacks were directed against their northern neighbors. The tribes actually on the soil of Pennsylvania, however, were chiefly the Delawares, the Shawanese, the Nanticokes, and the Conestogoes. The first named used as a hunting ground all the region extending from the sources of the Delaware and Susquehanna rivers, southward to the Lehigh hills, and westward far beyond the Susquehanna. The Shawanese came to the Ohio from the south, and roamed over the territory upon which later stood Fort Pitt. A large part of them advanced to the eastward, and built their wigwams, some near the confluence of the Lehigh and the Delaware, some near the site of Philadelphia, and still others in the Wyoming region. But by 1755 most of them had returned to the Ohio. The Nanticokes probably made their way from Maryland northward to the Wyoming region, and the Conestogoes dwelt in Lancaster County, near the mouth of Conestogoe Creek.¹

With this general idea of the location of the several tribes, we are ready to discuss the policy of the proprietors and of the

¹ *Memoirs, Pa. Hist. Soc.*, xii, pp. 52, 86, 88, 90, 91; *Collections, Pa. Hist. Soc.*, i, no. 2, p. 85 *et seq.*

assembly in the management of Indian affairs. It seems needless to say that the policy of William Penn toward the Indians has been a favorite theme for poet and artist, while his somewhat imaginative ideas about them have been represented as indicating a spirit of proper and reasonable benevolence. He believed, strangely enough, that the aborigines were descendants of the ten lost tribes of Israel, and was at some pains to trace resemblances between the two.¹ But his purpose, however lofty was a mistaken one, and could not be realized, because it arose from ignorance of the essential characteristics of the Indian nature. The desire that Indian trade should be fairly conducted was laudable enough, but that juries in cases affecting an Indian should be composed equally of white men and red men,² was a notion whose absurdity was speedily revealed. Penn's addresses to the Indians in general, as well as to the emperor of Canada, a supposed savage potentate, breathe nothing but a spirit of fatherly kindness coupled with earnest protestations of interest in their temporal and spiritual welfare.³ On the other hand, it is well known how the Indians revered Onas (a pen) as they called him, and many a year passed before the recollections of his friendship faded from their memory, and his name ceased to be repeated around the council fire.

¹ "For their original, I am ready to believe them of the Jewish race, I mean of the stock of the ten tribes, and that for the following reasons: First, they were to go to a land not planted nor known, which to be sure Asia and Africa were, if not Europe, and He that intended that extraordinary judgment upon them might make the passage not uneasy to them, as it is not impossible in itself from the easternmost parts of Asia to the westernmost parts of America. In the next place, I find them of the like countenance, and their children of so lively resemblance, that a man would think himself in Duke's Place, Berry street, in London, when he seeth them. But this is not all. They agree in rites. They reckon by moons. They offer their first fruits. They have a kind of feast of tabernacles. They are said to lay their altar upon ten stones; their mourning a year; customs of women; with many other things that do not now occur [to me]. Penn's letter to the Free Society of Traders, August, 1683. Cornell, *History of Pa.*, pp. 115, 118.

² *Charter and Laws of Pa.*, p. 130.

³ Hazard, *Annals of Pa.*, pp. 532-3, 579.

This kindly treatment of the savages, it may be said, was not an insignificant factor in the growth and prosperity of the province.¹

The idea that the Indians were rightful owners of the soil was very strong in the mind of Penn, while his sons, though not so positive as to the strength of the nomadic tenure, bought lands from motives of custom and policy.² In Pennsylvania, as elsewhere throughout the colonies, the hold of the Indian upon the land was precarious. Different tribes or groups among them in their wandering life frequently occupied in succession the same tract, and might as often sell it to the white man. There, as elsewhere, for many years, Indian deeds defined boundaries in the loosest manner, so that the situation of the territory granted could not be easily ascertained. For these reasons, then, the opinion of Penn has not received the confirmation of law. The policy of his descendants in quieting Indian titles was similar to that pursued in other colonies, as will be shown later.

The first deeds of which we find mention were executed in July and August 1682, and recited the sale of a small piece of land between the Delaware River and Neshaminy Creek.³ A year later all lands situated between certain creeks and the limit that would be reached by a two day's journey with a horse westward, were disposed of. One chief gave up his right to lands west of the Schuylkill. Several chiefs sold all the region between the Schuylkill and the creeks west of it. Still more gave up their rights to certain territory between the

¹ The assembly, in 1722, stated that the "peaceable and prudent measures which the late honorable William Penn, our most worthy proprietary, took with the native Indians has been under God the happy foundation of the perfect good understanding between the English inhabitants of this colony and the native Indians." Bradford, *Laws of Pa.*

² Penn was also advised by the Bishop of London to purchase lands from the Indians. Penn MSS., Ford *vs.* Penn; William Penn to the Committee of Council, Aug. 14, 1683.

³ Smith, *Laws of Pa.*, ii, p. 110; *Penn. Arch.*, 1st series, i, p. 47.

Delaware and the Susquehanna, and extending southward to Chesapeake Bay. Not long after several Indian sales were made, and included a large portion of what had already been sold southward to Duck Creek in the Lower Counties, and westward as far as a horse could travel in two summer days.¹

In June 1692 land between certain creeks flowing into the Delaware, and stretching westward to the furthest bounds of the province, was given up.² Then came in 1696 what was known as Dongan's deed. As early as 1684 Penn had endeavored to secure land on the Susquehanna, but the Five Nations refused to sell it, and Gov. Dongan and the council of New York complained to the king, that Penn's pretensions to the Susquehanna would be injurious to New York.³ The proprietary agents nevertheless induced Dongan to purchase from the Five Nations lands lying on both sides of the river.⁴ But the great object of Penn was to obtain the stream and its tributaries throughout their entire course within the province. Therefore, although the lands in that region were not intended for immediate settlement, the proprietor would not relinquish a grant which would secure the whole of the Susquehanna from the pretensions of an adjoining province, especially as the boundaries by charter were very uncertain. Hence in April, 1701, he entered into agreements with the Susquehanna, Shawanese and Potomac Indians, by which they confirmed Dongan's deed, the original having been lost, and relinquished all title of the Susquehanna tribes to lands on that river.⁵ In 1722, however, at a treaty held with the council and Gov. Keith, the Conestogoe Indians complained about this grant, and asserted that Penn had induced some person from New York

¹ A similar deed for lands between Neshaminy and Pennypack Creeks was executed July 5, 1697. *Pa. Arch.*, 1st series, i, p. 124.

² *Ibid.*, pp. 62-67, 88, 91, 93, 95, 116; Smith, *Laws of Pa.*, ii, p. 111.

³ *N. Y. Col. Doc.*, iii, pp. 418, 422, 798.

⁴ *Pa. Arch.*, 1st series, i, pp. 74-76, 80, 121, 122.

⁵ *Ibid.*, pp. 133, 144-147; Smith, *Laws of Pa.*, ii, p. 112.

to purchase land on the Susquehanna from the Five Nations, who claimed a right to it on the ground that they had conquered the people formerly settled there. The Conestogoes declared that the territory should be viewed as common property among them, because Penn had so promised. But the governor was inclined to have them removed from the region in question, till the secretary agreed to quiet the contention by other grants. In 1730 the proprietors believed that their own pretensions to lands on the Susquehanna by virtue of Dongan's deed were precarious.¹ Hence they were careful to secure good Indian title, and assured all prospective purchasers that they would sell no land which had not been fairly bought from its alleged owners. In pursuance of this intention, in 1732 they purchased from certain Delaware chiefs all lands lying on the Schuylkill, or any of its branches, between the Lehigh hills and the Kittatinny hills, sometimes called the Endless Mountains. The latter, a parallel range, lay some thirty miles north of the Lehigh hills and extended from the branches of the Delaware on the east, to the branches of the Susquehanna on the west.² In

¹ P. L. B., i, Proprietors to J. Logan, April, 1730.

² "We Sasooan, alias Allummapis, Sachem of the Schuylkill Indians (Delawares), in the province of Pennsylvania, Elalapis, Ohapamen, Pesqueetomen, Mayeemoe, Partridge, Tepakoaset alias Joe, on behalf of our Selves, and all the other Indians of the said Nation, for and in consideration of twenty brass kettles, one Hundred Strowdwater Matchcoats of two yards each, One Hundred Duffel Ditto, One Hundred Blankets, One Hundred yards of half Thicks, Sixty linnen Shirts, Twenty Hatts, Six made Coats, twelve pair of Shoes and buckles, Thirty pair of Stockings, three Hundred pounds of Gun Powder, Six Hundred pounds of Lead, Twenty fine Guns, twelve Gun Locks, fifty Tommyhocks or hatchets, fifty planting houghs, one Hundred and twenty Knives, Sixty pair of Scissars, one Hundred Tobacco Tongs, Twenty fine looking Glasses, Forty Tobacco Boxes, one Thousand Flints, five pounds of paint, Twenty four dozen of Gartering, Six dozen of ribbon, twelve dozen of Rings, two Hundred Awl blades, one Hundred pounds of Tobacco, five Hundred Tobacco Pipes, Twenty Gallons of Rum, and fifty Pounds in Money, to us in hand paid, or secured to be paid by Thomas Penn, Esqr., one of the Proprietors of the said Province, the receipt whereof we do

1733, and again in 1742, the deed was acknowledged and confirmed.

Although the Six Nations admitted the validity of Dongan's deed, they still claimed the region in question. Hence the proprietors in 1736 obtained from the Six Nations, the Delawares, and the Shawanese, a further release for all lands on the Susquehanna, also eastward as far as its branches extended, northward to the Kittatinny hills, and westward to the setting of the sun. A few days later the same chiefs expressly granted all the territory comprised within Pennsylvania, and

hereby acknowledge, Have Granted, Bargained, Sold, Released and Confirmed unto John Penn, the said Thomas Penn and Richard Penn, Esq^{rs}., Proprietors of the said Province, all those Tracts of Land or Lands lying on or near the River Schuylkill, in the said Province, or any of the branches, streams, fountains or springs thereof Eastward or Westward, and all the Lands lying in or near any Swamps, Marshes, fens or Meadows, the waters or streams of which flow into or towards the said River Schuylkill, situate, lying, and being between those Hills called Lechaig Hills and those called Keekachtanemin Hills, which cross the said River Schuylkill about Thirty Miles above the said Lechaig Hills, and all Land whatsoever lying within the said bounds and between the branches of the Delaware River on the Eastern side of the said Land, and the branches or streams running into the River Susquehannah on the western side of the said Land, Together wth all Mines, Minerals, Quarries, Waters, Rivers, Creeks, Woods, Timber and Trees, with all and every the Appurtenances to the hereby Granted Lands, and premises belonging or appertaining, To have and to hold the said Tract or Tracts of Land, Hereditaments, and premises hereby Granted (That is to say, all those Lands situate, lying, and being on the said River Schuylkill and the branches thereof, between the mountains called Lechaig to the South, and the Hills or mountains called Keekachtanemin on the North, and between the branches of Delaware River on the East, and the waters falling into the Susquehanna River on the West), with all and every their appurtenances unto the said John Penn, Thomas Penn, and Richard Penn, their Heirs and Assigns, to the only proper use and behalf of the said John Penn, Thomas Penn, and Richard Penn, their Heirs and Assigns forever, so that neither we the said Sasoonan alias Allummapis, Elalapis, Ohopamen, Pesqueetamen, Mayemoe, Partridge, Tepakoaset alias Joe, nor our Heirs, nor any other Person, or Persons hereafter, shall or may have or claim any Estate, Right, Title, or Interest of, in or to the hereby Granted Land, and premises or any part thereof, But from the same shall be Escheated, and forever delivered by these presents. In witness whereof the said Sasoonan alias Allummapis, Elalapis, Ohopamen, Pesqueetamen, Mayemoe, Partridge, Tepa-

promised that thereafter they would sell no land in the province except to the children of William Penn.¹

This deed immediately brought up a dispute about what was known as the "Walking Purchase," which was obtained from certain Delaware chiefs in August, 1686. After naming certain tracts of land between the Delaware River and Neshaminy Creek, it specified that the western extent of the grant should be as far as a man could walk in a day and a half. Now in September 1718 a deed of release for lands between

koaset alias Joe, have hereunto set their Hands and Seals at Stenton, the Seventh Day of September in the Year of our Lord, one Thousand Seven Hundred and thirty two, and in the Sixth year of the Reign of King George the Second over Great Britain, etc.

We the above named Sasoonan alias Allummapis, Elalapis, Ohopamen, Pesqueetamen, Mayemoe, Partridge, Tepakoaset, als Joe, Doe hereby acknowledge to have had and Received of and from the above named Thomas Penn, all and every the above mentioned parcells and quantities of Goods, and fifty pounds in money, being the full consideration for all and Singular the above Granted Lands and premises, and Doe acknowledge our Selves fully Satisfied and contented for the same, as

Witness our Hands,
Sealed and Delivered
by Sasoonan, Alalapis, Pesqueetom, Ohopamen, Mayemoe, Partridge & Tepakoaset, in the presence of
JAMES LOGAN,
THOMAS FREAME,
ISAAC MORRIS, Junr.,
ROBT. CHARLES,
PETER LLOYD,
W. PLUMSTED,
JAMES HAMILTON,
MORD. LLOYD,
JAMES STEEL.

SASOONAN alias ALLUMAPIS,
his x mark.
ALALAPIS, his x mark.
PESQUEETOM, his x mark.
OHOPAMEN, his x mark.
MAYEEMOE, his x mark.
PARTRIDGE, his x mark.
TEPA x KOASET,
mark.

Pa. Arch., 1st series, i, pp. 344-7.

¹ Confirmed in July, 1754; Smith, *Laws of Pa.*, ii, pp. 115, 116; *Pa. Arch.* 1st series, i, pp. 494, 498. Penn MSS., *Offic. Corresp.*, vi; Gov. Morris to Sir William Johnson, Nov. 15, 1754.

the Delaware and the Susquehanna had been granted by Delaware chiefs, with an acknowledgment that the lands had been duly paid for, and that they had seen and heard read title deeds given under the hands and seals of their ancestors, by which the lands in question had been sold to William Penn. In this deed the indefinite language of early grants was avoided, and the northern limits were fixed at the Lehigh hills. Hence the northern limit of the "Walking Purchase," which would have extended beyond the Lehigh hills, was restricted to these hills. Ten years later, at a treaty held in Philadelphia, the entire deed was confirmed and the chiefs admitted that they had been paid.¹

It was contended by the opponents of the proprietary party in the province, that the territorial rights of the Six Nations were confined to the regions watered by the upper Susquehanna and its tributaries, and as they claimed no lands on the Delaware, they could not convey any there. The tract sold in 1732 comprised none of the lands on the Delaware or its branches, and certainly none at the confluence of the Delaware and Lehigh. Granting the authenticity of the deed of 1686, it had never been "walked." The land at the junction of these two rivers, or "forks of the Delaware" as it was called, was moreover several miles north of the tract specified in the deed of 1718. The Delawares of course had rights there. Hence, August 25, 1737, the proprietors obtained from them another release of the "Walking Purchase." The Indians also desired that it should be walked.² The walkers chosen by the proprietors were so expert that the Indians, who were unable to keep pace with them, complained of their rapidity. Furthermore a draft of the tract, made by the surveyor-general shortly after, included the best land in the "forks" of the Delaware. Hence the chiefs who signed the release of 1737 were unwilling to

¹ Smith, *Laws of Pa.*, ii, p. 113.

² *Pa. Arch.*, 1st Series, i, pp. 541-2.

leave the lands, or to give quiet possession to those who came to take them up.¹ They remonstrated, and threatened to defend their position by force. Accordingly, in 1741, a message was sent to the Six Nations urging them to compel the Delawares to relinquish possession of the "forks," and asserting that their coming to Pennsylvania was indispensable to the present peace of the colony.²

At this treaty, held with the Six Nations at Philadelphia in 1742, Gov. Thomas declared that, as they applied on all occasions to the Pennsylvania government to remove the white people who settled on lands before they were duly purchased, and in reference to such appeals proclamations had been issued to eject the intruders, they in turn should cause the Indians to remove from the locality named, and not give further disturbance to those now in possession. Canassatego, in the name of the rest, then severely censured the Delawares, stating that he had seen the deed signed by nine of their ancestors in 1686, as well as a release signed in 1737 by sixteen of themselves, and desired to know how they, being conquered subjects of the Six Nations, dared to sell any land whatsoever. In fact they had long since been paid for it, and now they appeared to want it again. He sharply criticised their deceitfulness in not informing the Six Nations of the sale, and for such dishonesty commanded them immediately to depart and abandon all claims to lands on this side of the river. They were bidden to go either to Wyoming or Shamokin, and never again to interfere in affairs concerning land. The command was

¹ The walk extended from Wrightsville to Mauch Chunk, a little over 60 miles. From this point a line was run to the Delaware, not at the Water Gap, but at the mouth of Lackawaxon Creek. This, not the length of the walk, was what made the dissatisfaction. Hoyt, *Syllabus of the Controversy between Connecticut and Pennsylvania*, pp. 15-16. But the subsequent complaints of the Indians were due far more to the presence of squatters than to any supposed injustice on the part of the walkers. Hazard, *Register of Pa.*, v, p. 339; vi, p. 209 *et seq.*, p. 337 *et seq.*

² *Voices*, iii, pp. 481-2.

obeyed, but the Delawares and Shawanese never forgot the disgrace they had suffered, and later wreaked a bloody vengeance.¹

In 1749 the proprietors for £500 purchased from the Six Nations all the territory beginning at the Kittatinny hills on the east side of the Susquehanna, which it will be remembered was the northern boundary mentioned in the deed of 1736, and running up the river by its course to the mouth of Mahanoy Creek, thence by a straight line to the Lehigh River, and thence to the mouth of Lackawaxon Creek. From this point the line turned eastward to the Delaware, and followed the river to the hills mentioned, and thence along the range of the hills, it returned to the place of starting.² At the Albany treaty, five years later, the proprietors for £400 purchased from the Six Nations all lands in Pennsylvania, extending north-west by west from the Kittatinny hills on the west branch of the Susquehanna to the limits of the province, thence southward to the southern boundary, thence by this boundary to the south side of the hills, and from that point to the place of beginning. In the deed it was also stipulated that whenever the region north and west of the Alleghany Mountains was settled, the Indians should receive an additional compensation. The purchase appears to have been fairly made, but it was undoubtedly one of the causes of the Indian revolt.³ The savages said that they did not under-

¹ It seems clear that the French gained over the Indians by the promise to restore to them their lands. *Col. Rec.*, v, p. 519 *et seq.*; *Votes*, iii, p. 555, iv, pp. 492, 718 *et seq.*; *Pa. Arch.*, 1st series, i, p. 629.

² Smith, *Laws of Pa.*, ii, pp. 119, 126; *Pa. Arch.*, 1st series, ii, p. 33.

³ In an address to Gov. Denny in June, 1757, the assembly stated that the Indian hostilities in great measure were due to exorbitant and unreasonable purchases made or supposed to be made from the Indians, and the manner of making them. *Votes*, iv, p. 718 *et seq.*; *N. Y. Col. Doc.*, vii, pp. 18, 130, 169, 276.

If the Indians had had good cause for complaint against the proprietors, they would have made it at the preliminary meeting with the Six Nations at Carlisle in October, 1753. But the three Commissioners, Richard Peters, Isaac Norris and

stand the points of the compass, and if the line was run so as to include the west branch of the Susquehanna, they would never agree to it. Observation was made that the Connecticut claimants were then attempting to make surveys above Shamokin, and that this deed was intended to prevent their interference. But the only parts of the province apparently left open to the natives were either mountainous, or claimed by the Connecticut intruders. The territory sold included the hunting grounds of the Delawares, Shawanese, Nanticokes, Tutelas, and Ohio Indians. As a result, several of the tribes thus deprived of their lands joined the French, and the next year Braddock's defeat showed their resentment. Sir William Johnson then wrote to the Board of Trade, declaring that to surrender the deed of sale, and to settle the boundaries with the Indians, would be for the public service. To this the proprietors agreed, on condition that the Indians should not grant the lands to any one else.¹ They felt that their claims should be made good, but not at the expense of encroachment on what was viewed as Indian property. They also believed that, before the boundary line of any purchased tract was run, the Indians should appoint some of their own number to be present. Therefore at a treaty held at Easton in October, 1758, they gave up all claims to the region about the Ohio, north and west of the Alleghanies, and the Indians on their part

Benjamin Franklin, sent by the assembly to investigate the Indian grievances, made no mention in their report of any complaint by the Indians that they had been defrauded. Indeed, it is certain that no regular complaint against the proprietors ever was made by an Indian council. Some of the stragglers, when they wanted more rum, would find fault, asserting that they had been cheated. "This would always be the case as long as there were any Indians and as long as they could get rum." Such was the opinion of an interpreter thoroughly acquainted with the Indian character, and assuredly ought to have great weight in forming a judgment of the above transaction. *Col. Rec.*, vi, pp. 724-6, vii, p. 245; *Pa. Arch.*, 1st series, iii, p. 313, Conrad Weiser to Gov. Denny.

¹ P. L. B., v, T. P. to Johnson, March 12, 1757; to Peters and Weiser, Nov. 7, 1757.

agreed to settle the boundaries of the remainder. Indeed, so cautious were the proprietors not to offend the savages, that explicit instructions to this end were sent to the deputy surveyors.¹

We have seen from the record of Indian purchases that the lands whose possession was disputed by the savages, had been repeatedly bought by the proprietors. But the Delawares and Shawanese were still dissatisfied. Strenuous efforts were made to pacify them. In 1756 and 1757, conferences were held with their chiefs. Teedyuscung, one of the most prominent of the Delawares, claimed that the sale of 1737 was made with the understanding that the lands should be bounded by a line parallel to the course of the Delaware; but he asserted that instead the proprietors had had a straight line run with the compass. As by this act they were enabled to take possession of twice the quantity which the Indians intended to convey, he charged them with fraud, because they had altered and violated the terms of the deed. The proprietors immediately sent a commission to several persons to establish their innocence, and ordered the complaints of the Indians to be laid before the king. The assembly also sent a petition from Teedyuscung to the king, and Franklin the agent of the assembly at the time laid it before the Board of Trade.² The proprietors were called before that body to make their defence, and after all the evidence had been presented, the Board advised the king to refer the affair to Sir William Johnson.³ Orders to this effect were accordingly sent to Johnson. But Teedyuscung was displeased, for he was more inclined toward Gov. Hamilton whose public character was unimpeachable. A Delaware

¹ No warrants were to be granted until such a line was properly ascertained; and applications for lands near this line were marked "Quaere—if in the purchase." Smith, *Laws of Pa.*, ii, p. 122. *N. Y. Col. Doc.*, vii, pp. 377, 388; Penn MSS., T. P. to Peters, May 26, 1758, Jan. 9, 1761.

² Penn MSS., T. P. to Peters, Sept. 8, 1758, Feb. 10, 1759, and May 19, 1759.

³ *Ibid.*, June 7, 1759.

chieftain would naturally question the justice of a man whose interest lay particularly with the Six Nations, and whose influence over them was paramount. Nor were the Penns enthusiastic over the action of the home government. They felt that free and open conference was the best way to win confidence, and that it was not proper for Johnson to arbitrate between themselves and Indians who lived within the bounds of their province. But this could not prevail against the policy of the home government, which was then favorable to the assumption by itself of all control of Indian affairs as a department of defense. After several conferences at which Johnson presided, and in which various deeds and affidavits were produced, Teedyuscung admitted that he had received a portion of the purchase money for the land, though most of it had been given to the Six Nations.¹ He then withdrew the charge of forgery against the proprietors, but insisted that the "walk" had not been properly conducted. Still on June 28, 1762, he agreed to sign a release for all the lands in dispute.² On the other hand, no special reservation had been mentioned in the records and documents describing the property of the Delawares, but at their own request they were allowed to remain upon the land at Wyoming so long as they choose to occupy it. But in case they wished to depart, the proprietors reserved the right immediately to grant it to white settlers. In fact the proprietors had no desire to force the Indians to leave, and were willing to reserve for them at a suitable distance from the settlements of the whites land sufficient in quantity for hunting or cultivating.³ The last purchase made by the proprietors from the Indians, took place at Fort Stanwix

¹ The proprietors were assuredly not obliged to ascertain what other claimants existed after the principals had been satisfied; but they thought the Six Nations ought to have been more generous in their apportionment. *Ibid.*, Feb. 10, 1759.

² *Ibid.*, Aug. 10 and Sept. 10, 1762; *Pa. Arch.*, 1st Series, iv, p. 85.

³ *Ibid.*, Feb. 10, 1759.

in 1768. Here for a consideration of \$10,000, they obtained from the Six Nations all of Pennsylvania, not hitherto purchased, nearly as far west as the Ohio, but within minutely specified bounds. At the same time they gave \$500 for the lands of the Conestogoe Indians, who had been murdered by frontier ruffians several years before.¹

This concludes the sketch of the actual purchases from the Indians. We see how the proprietors repeatedly bought the same territory. As a general rule also their officers did not grant lands beyond the limits of the tracts purchased.² Hence all insinuations about unfair practices on their part were without foundation.

Let us now consider the management of Indian affairs as more particularly affecting the regulation of Indian trade, the encroachment of the whites and the settlement of boundaries. At the outset Penn had refused a very lucrative offer for the monopoly of the Indian trade, because he feared that his kindly treatment of the savages would not be imitated by the traders.³ But he recognized the necessity for some regulation of the traffic. Several laws on the subject were passed, but as a rule attempts to check by legislation the sale of rum, the debauching of the Indian women, and other excesses were ineffectual. This was mainly due to the reckless conduct of the traders, and to the natural weakness of the Indians for spirituous liquors, although it is true that the Indian chiefs not infrequently complained of the indiscriminate sale of rum.⁴ Considerable uncertainty prevailed, however, as to the wisdom of allowing the savages the use of liquor in limited quantities. Penn himself was accustomed to give the chiefs a small quantity whenever he held a treaty with them, and was not unwilling that the Indians should buy liquor, provided they would

¹ *N. Y. Col. Doc.*, viii, pp. 126, 133. ² *Binney's Reports*, p. 248,

³ Hazard, *Annals of Pa.*, p. 522.

⁴ *Pa. Arch.*, 1st series, i, pp. 425, 549-552.

submit to the usual penalties for drunkenness.¹ At a session of the provincial council in 1701, at which Penn was present, the project of forming a company to take charge of the Indian trade was broached. It was suggested that the traders in their transactions should set the Indians a good example, and that care should be taken to instruct the savages in the principles of Christianity. It was also agreed that no rum should be sold, except to the Indian chiefs, and then only in limited quantities.² But the project failed at that time. Then complaints arose that persons from other provinces traded with the Indians, and, by making them intoxicated, succeeded in fraudulently depriving them of the very means of existence. Thereupon a law was passed in the same year forbidding non-residents to trade with Indians in the province, and at the request of several chiefs, it was further provided under heavy penalties, that no rum should be carried into the Indian villages. As proofs of such private dealings were often wanted, the statement of one professed Christian was deemed sufficient.³ But the trade with the Indians continued to be carried on by the most abandoned part of the community. The great quantity of liquor consumed by the savages rendered them intractable and quarrelsome. The traders, living as they did beyond the restraints of law, by their own intemperance, by the frauds they practiced, and by their other irregularities contributed much to estrange the Indians. To guard against these abuses, and to promote a continuance of the friendship Penn had established, a law was passed in 1715, providing that persons who had injured a peaceable Indian should be subject to the same penalties as if the injury had been committed against a white man. On the other hand, offenses committed by the Indians were similarly dealt with. Furthermore, persons who, on the testimony of credible Indians, were con-

¹ *Charter and Laws of Pa.*, p. 169.

² *Col. Rec.*, ii, pp. 19-21.

³ Bradford, *Laws of Pa.*

victed of spreading false news tending to alienate the savages, or to create fear among them, were subject to fine and imprisonment. No one was to be allowed to trade with the Indians, unless he was recommended by the county court to the governor for a yearly license, and furnished security for his reputable conduct and observance of the laws of the province. Freeholders, however, were permitted to buy goods from the Indians, but only for private use. As the debauchery among the savages did not seem to be much lessened, in 1722 it was enacted that trade with the Indians should be carried on within a settled township, and at the house of the trader. Not more than one gallon of rum should be carried beyond the settled portions of the province, and none should be sold except under the somewhat absurd condition, that a half gill might be given to an Indian by any person within his own home once every twelve hours. At treaties, however, the governor and council could do as they saw fit.¹ As these acts were of brief duration, but little good could be expected from them. Then, as the influence of the Quakers waned, those who were sent to enforce the laws readily connived at fraud and deceit. The proprietors believed that all measures of reform must fail, unless people of excellent character were alone permitted to settle near the Indians. They also recommended that trading should continue to be carried on under licenses from the governor, and that missionaries should be sent among the savages. They were somewhat interested financially in the trade, but they forbade their officers to engage in it. But little regard, however, was paid to these suggestions, since by the middle of the eighteenth century, the Indians had come to despise the government of the province because of its apparent weakness, and only a display of authority could awe them into submission.²

¹ Bradford, *Laws of Pa.*

² Penn MSS., *Supp. Proc.*, T. P. to Peters, Feb. 20, 1748, May 13, 1750, March 18, 1752; *Correspondence of the Penn Family*, R. Hockley to T. P., June 26, 1756.

The assembly by that time saw the necessity for governmental control of the Indian trade, and in 1758 a law was passed appointing nine commissioners for Indian affairs. They were made accountable to the assembly, and were given a percentage on the transactions. Agents at specified localities conducted the trade, subject to the directions of the commissioners, who were forbidden to engage in it either personally or in behalf of others. They supplied the agents with goods out of a capital stock appropriated by the assembly, and were empowered to borrow further sums in case the trade should prove lucrative. But if the profits were insufficient to pay salaries and interest, a provincial tax should be levied to meet the deficiency. When the goods were sold, the prices should be so regulated as to defray only the necessary expenses of the traffic, and the support of Protestant schoolmasters and missionaries; but any surplus that might accrue should be disposed of by the assembly. Finally, stringent measures were enacted against the sale of liquor to the savages, and private persons were restricted to trade conducted exclusively at their homes. The following year the capital stock and percentages were increased. But in 1763 the commissioners were ordered by the assembly to sell the stock, as trade was impossible on account of Indian hostilities. Seven years later, however, commissioners were appointed to confer with delegates from the neighboring colonies for the purpose of agreeing upon a general plan for the regulation of the Indian trade. The advent of the Revolution of course prevented any such plan from being carried into execution.

Whenever the Indians sold land, it was understood that the whites should not settle or encroach upon their hunting grounds. In fact, every attempt to settle on such lands was attended with complaint and uneasiness on the part of the savages. William Penn of course never allowed any land to be settled until it had been purchased from the Indians, and we have seen that his sons, so far as possible, followed this

policy. Indeed, by an act passed in 1700 private persons had been forbidden to buy lands from the savages without the permission of the proprietor. But it was a common practice for private individuals to settle not only on land which had not been purchased from the Indians, but on that for which they held no title from the Penns; also to take land on lease from the savages, or to bargain with them for the pasturage, timber, and mines. In an act passed in 1729 the practice was strongly condemned as unjust to the proprietors, and dangerous to persons who were properly entitled to take up land. Hence it was enacted that the law of 1700 should be rigidly enforced according to the rules prescribed in the English statutes concerning forcible entries and detainers. But the frontiersmen were not readily driven from their settlements. Consequently, the proclamations of governors, and the resolutions of the assemblies, that "for the peace of the country it was just that the Indian grievances should be removed," were often no more effective than the paper on which they were printed. The settlers continued to encroach, and gradually made their way to the fertile region in the "forks" of the Delaware. In 1728 the neighboring Indians prepared for war. Thereupon the proprietary officers desired them not to injure the settlers, but to wait until the matter could be adjusted. The savages submitted, but the encroachments continued, and they renewed their complaints.

The representatives of the Six Nations in 1742 remarked that the lands of the proprietors did not extend beyond the Kittatinny hills, but that white people had settled there and spoiled the hunting. They therefore asked that the squatters be ejected. Though Gov. Thomas stated that officers had been sent to stop such illegal proceedings, the Indians declared that these officers did not properly attend to their duties, and that, so far from ejecting the offenders, they made surveys for themselves, and were in league with the trespassers. They demanded that more effectual means and more

honest men should be employed. They asserted, moreover, that they had given the land bordering on the river Juniata to the Delawares, Shawanese, and Nanticokes, as a hunting ground, and requested that the squatters in that region also should be immediately expelled. Again, at a meeting of deputies from the Six Nations held in 1749, Gov. Hamilton was told to remove the trespassers from this territory, or disastrous results might follow.¹ Thereupon directions were speedily sent to check the evils, but as usual, owing to the strength of the frontiersmen, little was accomplished.² It was generally understood that the Six Nations should be consulted on all business that concerned the Indians. A meeting was therefore held at Carlisle in 1753. Many of the sachems attached to the British interest were dead, while the chief sachem at the conference was known to be inclined toward the French. Again the deputies censured the government because of its delay in taking effective measures to stop illicit settling. The following year under orders from the king, the famous conference with the Six Nations was held at Albany, and extraordinary efforts were made to preserve the friendship of the Indians. The Board of Trade at this time also recommended that, if practicable, all the provinces should be comprised in a general treaty to be made in the king's name; for, it declared, the conclusion of separate treaties by the individual provinces was improper, and likely to be attended with great inconvenience to the royal service. Moreover, the Board viewed the separate negotiations by the assemblies with the Indians as a distinct usurpation of the prerogative of the crown.³

During the progress of the treaty, and even prior to it, a dispute arose between the assembly and the proprietors. We

¹ *Col. Rec.*, iv, p. 560 *et seq.*; v, pp. 398-440.

² *Votes*, iv, pp. 137, 509, 517, 528; Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 9, 1749.

³ *Ibid.*, pp. 151, 279, 280, 286, 509, 517, 528; Penn MSS., T. P. to Peters, June 11 and July 3, 1755.

have seen that it had been the custom for the governor and council, or members of the latter, to manage all negotiations with the Indians. But gradually, after the assembly had begun to make appropriations for presents, the governor and council while recognized as the proper agents in such affairs, were deprived of some of their exclusive power. The house either gave directions concerning the disposal of the money, or was represented by committees at the conference. It even went so far as to attempt completely to control Indian affairs by such committees, thereby assuming to itself the rightful authority of the executive. Not till about the middle of the eighteenth century, however, did the expense of Indian negotiations assume serious proportions. Then the assembly, having spent upwards of £8,000 for this purpose, began to feel that the proprietors ought to bear a part of the charges arising from such negotiations and treaties. The Penns replied that, since they regularly paid the interpreter, and had given the Indians the proper amount of money for their lands, they did not consider themselves under any obligations to contribute additional sums. As it was a case of public expenditure, they believed themselves to be no more liable than governors of other provinces. But the house contended that the cultivation of friendship with the Indians would redound to the special advantage of the proprietors, and that for the attainment of this object larger contributions were necessary. Hence, even though the Penns might be under no legal obligations, they were equitably bound to lessen the burden of the people. In fact, as owners of the soil and as governors, they should bear all the expenses involved in the conclusion of treaties which were of a territorial character.¹ But the proprietors remained obdurate.

In this connection, it may be said, that we have found no good evidence to prove that the proprietors had wronged the Indians. But the contrary was intimated by the

¹ *Votes*, iv, pp. 264, 361-2; *Pa. Arch.*, 1st series, ii, p. 108.

"Friendly Association," a band of Quakers who had united for the purpose of quieting the troubles with the savages. Its interference, however, was condemned by the home government, as well as by the proprietors. Its intentions may have been praiseworthy, but the methods employed by some of its members suggested the thought that personal and political schemes¹ would be promoted. Indeed, the proprietors refused to approve of its proposal that commissioners appointed by the Quakers should treat with the Indians. Their reason for this was that the Quakers refused to admit the rightfulness of the claim of the Six Nations to the territory then under consideration, a claim which of course rested solely on conquest. By their interference at this juncture it was believed that contention would be aroused anew between the Six Nations and the Delawares.²

Whatever was the opinion of the Quakers concerning the complaints of the Delawares, the Six Nations at the treaty in 1754 thought the defection of the tribes in Pennsylvania was due chiefly to the presence of the squatters, and to the fearful slaughter of Braddock's army, as thereby the reputation of the French was increased, and the want of union among the English made apparent.³ Hence, in 1760, the assembly passed a law providing heavy penalties against hunting beyond the limits of territory purchased by the proprietors. During Pontiac's war, also, orders were sent from England to Gen.

¹ "Letter from a Gentleman to his Friend in Philadelphia, 1764." "If the motives that induced the Friends to subscribe toward the settlement of the differences with the Indians, were what you believe them to be, such deserve our praise and thanks instead of censure, and I am sure will always meet with my regard. I make no doubt that many of the hot-headed party men be among them. Yet there are many others whose intentions are for the general good, and who desire to have these Indian differences settled in a just and reasonable manner." P. L. B., v, T. P. to W. Logan, Dec. 9, 1757; to Peters, May 26, 1758.

² *Col. Rec.*, vii, p. 658; *Votes*, iv, p. 800; Penn MSS., T. P. to Peters, May 26, 1758; to Gov. Denny, April 13, 1759.

³ *Ibid.*, vi, p. 111 *et seq*; vii, p. 245.

Amherst and Sir William Johnson to remove all trespassers on the Indian lands. To this end, in 1767 Gen. Gage notified Gov. Penn that effectual means must be immediately taken to drive out the lawless settlers.¹ Little attention, however, was paid to the governor's proclamation, and even the removal of squatters by the garrison of Fort Pitt gave only temporary relief, because, unless deterred by severe punishment, they kept returning in steadily increasing numbers. It was also seen that no progress toward a peaceful solution of the question could be made with defective laws, or without the exercise of the coercive powers of government. The settlers, as well as the Indians, must be kept in order. Hence Gen. Gage promised the civil officers the aid of the troops in suppressing the disturbances on the frontier. Also, in the early part of 1768, the assembly enacted a law making death without benefit of clergy the penalty for trespassing on Indian lands, while even surveying or marking trees on such lands should be visited with heavy punishments. This rigorous treatment was softened by an act of the following year, making such acts of trespass a crime punishable by a fine of £500, and a year's imprisonment.² Finally, the assembly sent orders to its agents in England to obtain, if possible, a command from the crown for the establishment of a boundary line between the Indians and the province, pledging at the same time a gift of £3000 to the savages to remove their discontent.³ Instructions for this purpose were sent, and in 1768, at Fort Stanwix, a conference

¹ It is important to note how the progress of events had served to dispel the visionary ideas of early times concerning the nobility of the Indian nature, and to reveal it in its actual savagery. William Penn's humanitarianism stands in bold contrast to the stern decrees of a later time, when the province was forced to endure the sufferings of an Indian war. Gov. John Penn issued a proclamation, July 7, 1764, offering bounties for the lives or scalps of all Indian enemies, whether male or female, adults or children.

² Miller, *Laws of Pa.*; *Votes*, vi, p. 33; Penn MSS., *Offic. Corresp.*, x, John Penn to T. P., Jan. 21, 1768.

³ *Votes*, vi, p. 51.

was held which was attended by commissioners from New York, New Jersey, Pennsylvania, and other colonies.¹ In connection with this meeting, Sir William Johnson made large purchases from the Indians preparatory to the settlement of boundaries.²

The fact that the home government had assumed such complete control over Indian affairs caused the proprietors to fear lest their border territory might be seized by the crown under pretext of pacifying the savages. But this was not done, and the treaty at Fort Stanwix brought to a close the Indian troubles of the proprietary period.

¹ Penn. MSS., *Offic. Corresp.*, xi, R. Peters to T. P., May 15, 1774.

² The proprietors thought it was far better to have fixed the boundaries with the Indians, and secured a deed from them, than to have been compelled to negotiate with the English treasury for part of the lands comprised in a general deed made to the crown. P. L. B., ix, T. P. to Tilghman, Jan. 31, 1769.

CHAPTER VII

BOUNDARY DISPUTES

I

Maryland

THE history of this famous contest concerning the location of the boundary line between Maryland and Pennsylvania and the possession of the Lower Counties, has never been exhaustively written. Short treatises as a rule have failed to indicate clearly the nature of the dispute and the exact points in controversy. The treatment of this question properly involves a discussion of the territorial grants by charter from the king, and of the deeds of enfeoffment granted by the Duke of York. Connected with this discussion also are the disputes about the location of the fortieth degree of north latitude, and the significance of the words "*hactenus inculta*." Then we shall consider the agreement of 1732, and the uncertainty about the situation of Cape Henlopen. Finally the decision of the chancellor, and the subsequent proceedings of the commissioners until the line was definitely settled in 1767 will be examined.

We have seen that by the charter of 1681 Penn was entitled to all the section of country bounded on the east by the Delaware, from a point twelve miles north of the town of Newcastle, to the forty-third degree of north latitude. On the south, it was to be bounded by the circumference of a circle whose centre was Newcastle and whose radius was twelve miles in length, and which was drawn from north to west till it reached the beginning of the fortieth degree. From this

point of contact, the line was to extend directly westward to the limit of longitude. The charter of Maryland, bestowed upon Lord Baltimore in 1632, specified that his territorial grant should include a part of the peninsula between the ocean and Chesapeake Bay, and be divided from the rest of that peninsula on the south by a line drawn from Watkin's Point on the Chesapeake to the ocean. From this southern limit the eastern line should follow the coast northward to that part of Delaware Bay which lay under the fortieth degree north latitude, where the grant in 1620 to the New England Council ended. The northern limit of the grant was the fortieth parallel which it followed as far west as the "true meridian of the first fountain of the river Potomac." From this point the boundary line turned in a south-easterly direction to the eastern bank of the Potomac; following thence the course of the river, it was to terminate at a place called Cinquack, now Smith's Point, near the mouth of the Potomac. The southern boundary was completed by the shortest line from Cinquack to Watkin's Point.

As early as 1623 Fort Nassau was founded by the Dutch on the east side of the Delaware River, but three years later it was abandoned. In 1629 and 1630 two tracts of land on Delaware Bay were purchased by members of the Dutch West India Company, and in 1631 a settlement called Swaanendael was made.¹ This was destroyed by the Indians early in the following year.² Hence at the time of the grant to Baltimore only roving bands of savages, or possibly a few Dutch traders, inhabited the region.³ In 1638, however, the Swedes took possession, and remained in authority till 1655, when they were subdued by Stuyvesant and the Dutch. Again in 1664 this territory, as well as New York, fell into the hands of the English.⁴ Thereupon Charles II, by letters

¹ Hazard, *Annals of Pa.*, pp. 23, 24.

² *Ibid.*, pp. 25-28.

³ Brodhead, *History of New York*, i, pp. 200-6, 213, 219.

⁴ Hazard, pp. 364-5.

patent dated March 12, 1664, and June 29, 1674, granted to his brother James, Duke of York, a large part of this conquest ; but it was specified that the western territorial limit of the grant should be the Delaware River. Inasmuch as the "country of Newcastle," as it was generally called, had been governed by the Dutch authorities at New Amsterdam, the duke's officers assumed control on the ground that it was an "appendix to New York," though legally he had no title to it.¹ Penn desired to control the navigation of the Delaware. Hence with some difficulty he obtained from the duke, August 24, 1682, deeds of enfeoffment for the country of Newcastle, or the three Lower Counties on the Delaware. By these he was granted the territory between the northern point of the circumference of the circle mentioned in the charter of Pennsylvania, and the latitude of what was called Cape Henlopen.² On October 28, 1682, Penn demanded of certain persons appointed by the duke that the terms of the deeds should be fulfilled. He was thereupon given quiet possession and seisin by delivery of the fort at Newcastle, a porringer of water from the Delaware, a piece of turf and a twig in token of his right to the soil. Upon his assurances that their rights would be respected, the people promised obedience. Moreover, although the duke's title was defective, and although it was a principle of English law that rights of government could emanate only from the crown, nevertheless, as rights of government had been exercised, the governor and council of New York, in November 1682, issued a proclamation that due submission should be made to Penn. It had been stipulated in the deeds that the duke should confirm this enfeoffment. He, therefore, applied to Charles for an express grant of the Lower Counties. By letters patent dated March 22, 1683, he was given all the

¹ The duke's attorney admitted that the title of his noble client rested not on his charter, but on the king's acquiescence. *Ibid.*, p. 476; *Documents Relating to Colonial History of New York*, iii, pp. 239, 247.

² Hazard, pp. 521, 588.

territory between New Jersey and Maryland, as far south as Cape Henlopen, and full powers of government, with a reservation of appeals to the crown. Not satisfied with this, and probably in pursuance of his agreement with Penn, for whom, as is well known, he had a strong personal regard, he gave up this charter, and petitioned the king for a further and more beneficial grant. This it seems was in course of preparation when it was stopped by a counter petition from the agents of Baltimore. The docket of the intended grant ran as follows: "A bill signed by R. Sawyer (the attorney-general) and now remaining in the signet office, containing the king's grant to the Duke of York in fee, which recites that the Duke of York had surrendered to the king the letters patent dated March 22d, last, which surrender his Majesty had accepted and thereby did accept. Therefore, the king, of his especial grace, certain knowledge and mere motion grants to the Duke of York in fee, April 13, 1683, all that town of Newcastle, otherwise called Delaware, situate, lying, and being between Maryland and New Jersey, and all that river called Delaware, and soil thereof, and all islands in the said river, and all that tract of land upon the west side of the river and bay of Delaware, which lieth from Schuylkill Creek upon the said river, unto Bombey's Hook, and backwards into the woods so far as the Minquas country, and from Bombey's Hook on the same river unto Cape Henlopen, now called Cape James, being the south point of Asea Warmett inlet, and backwards into the woods three Indian-day's journeys, being formerly the claim or possession of the Dutch, or purchased by them, or which was by them first surrendered to Colonel Nicholls, and which hath since been surrendered to Sir Edmund Andros, and hath for several years been in possession of the Duke of York." The quit rent was to be one beaver skin, delivered annually; and the charter was to be good, notwithstanding "any former letters patent for the premises, or any part thereof, granted by progenitors unto any

person or persons whatsoever." Lastly, it was endorsed "Expediatur apud West Monaster decimo sexto die Aprilis Anno regis Caroli Secundi Tricesimo Quinto per Morice."¹

Such a grant assuredly would have conflicted with that of Pennsylvania, especially with regard to the Delaware river, while it would deliberately set aside Baltimore's claims. It seems likely therefore that it was the duke's intention to leave no space intervening between Maryland and Pennsylvania. Though this grant was registered in the books of the Hanaper Office, if it did not as a charter pass the great seal, it is doubtful whether the duke's surrender of his patent of March 22 was binding. Such a construction of the case would leave him in possession of the Lower Counties, thus apparently violating his contract with Penn. Moreover, if the duke's title should be determined merely by the words of the charters he received from the king in 1664 and 1674, the deeds he gave Penn were not legally valid, because he was giving up land which had never belonged to him, though the grant subsequently made to him in March 1683 was good. Admitting, however, that his title by charter based on conquest was valid, and that his deeds to Penn were therefore valid, then his letters patent of March 1683 conferred merely the powers of government, for it is not to be supposed that any subsequent grant from the king could invalidate a private contract. But this would be such an irregular proceeding, that it is safer to assume that it was the duke's purpose to secure the grant from Charles for Penn's benefit, and that Penn had agreed to the plan. This view of the case is borne out by the fact, that the patent of March 1683 was transferred by him to Penn as a security until he could make a further confirmation of his deeds.²

In a letter to some friends, written June 10, 1691, Penn as-

¹ Penn MSS., *Charters and Frames of Government; Breviat of Evidence*, Penn and Baltimore, p. 58.

² *Breviat*, p. 56.

serted that the duke, after becoming James II., had given him a charter for the Lower Counties.¹ His assertion was true only in part, because the grant never passed the great seal. It seems that on December 10, 1688, the day before James fled from Whitehall, the solicitor general, acting under his orders, prepared this charter.² In the preamble it was stated that the king had intended to grant to Penn all the territory east of a line of division made by an order in council dated November 7, 1685, and that Penn had been advised that the indentures of August 24, 1682, gave him no right to exercise any power of government. It was also declared that Penn had promoted liberty of conscience, and that, according to the terms of the indentures, he might be required to pay the king half of the profits from the land; but that he could not collect rents on account of the disturbances created by Baltimore and his agents. Hence, in order that Penn should not be called in question, and should not fall within the reach of any law, or be liable to prosecution for any crimes or offenses which he might have committed in assuming jurisdiction over the Lower Counties, he was released from the payment of rents and profits, and pardoned any felony or treason involved in such assumption of authority. Furthermore, for a consideration of ten shillings, he was granted all the eastern half of the territory between the "the eastern sea, river and bay of Delaware, and Chesapeake Bay," as divided by the order in council just mentioned. Of this Penn was made true and absolute proprietor. The territory should be held as of the castle of "New Windsor in our county of Berks in England," at a quit rent of one beaver skin. It was to be erected into a province and seignior, and to be called Lower Pennsylvania. Penn could pardon all crimes except treason. To all people, except such as should be specially forbidden, was given the liberty of transporting

¹ Gordon, *History of Pa.*, p. 601.

² Penn MSS., *Charters and Frames of Government*.

thither their persons and property. The people should hold their land of Penn as of the seignory of Newcastle, by such rents, customs and services as should seem to him fit. If the inhabitants of Lower Pennsylvania so desired, it might be united with Pennsylvania, in order that they might have one assembly; and if the laws of England and Pennsylvania would allow it, the one assembly might legislate for both. Penn, his heirs and assigns, were given the same powers of legislation in this territory as existed in Pennsylvania. Except that nothing was said about the king's right to one-fifth of royal mines, this charter was very similar to that of Pennsylvania. Its failure to pass the great seal once more shows the title of the duke, and through him of the crown by the charter of March 1683, to be valid unless some other claims existed.

Baltimore's charter was the great obstacle in the way of the perfection of the duke's title. But in order to understand this more fully we must endeavor to establish the location of the fortieth degree, and the meaning of the phrase "which lieth under," as found in the Maryland charter, and the phrase "unto the beginning of the fortieth degree," as found in the Pennsylvania charter, taking into consideration the fact that Baltimore's charter antedated Penn's by forty-nine years. At the outset it must be borne in mind that accurate geographical knowledge or calculation was at that time very rare. In 1680, when Penn was negotiating for his grant, the agents of Baltimore petitioned that the grant should lie north of the Susquehanna fort, as that was believed to be on the northern boundary line of Maryland. To guard against any encroachment they asked also that they might see the grant before it passed the great seal. To the proposition concerning the Susquehanna fort Penn agreed. There appear, however, to have been two forts of that name in this region; but the situation of the one probably alluded to in 1680 was at the junction of the Susquehanna River and Octorara Creek, almost directly west of New-

castle. It was thus on the fortieth parallel. Also, the attorney general, to whom the matter of the boundary was referred, stated his belief that the Lower Counties were separate and distinct from Baltimore's grant, but confessed that the lines were very uncertain. He bounded Maryland on the south by Virginia, on the east by the ocean and Delaware Bay, and on the north by the part of the Delaware river which lay under the fortieth degree, and thence by a straight line westward. But he was somewhat undecided as to whether the Dutch and Swedes owed obedience to the duke or to Baltimore.¹ This would seem to show that by charter Baltimore was entitled to the Lower Counties.

Again, from the identity of names and localities there is little doubt that Capt. John Smith's map of 1624 was used to determine the territorial limits mentioned in the charter of Maryland. By this it appears that the fortieth parallel crossed the Delaware at a point where it would perhaps be difficult to distinguish between bay and river. West of that it crossed the place where Newcastle later stood, and passed near the head of Chesapeake Bay and the sources of the Potomac. According to this calculation then, the thirty-ninth parallel would intersect a point about two miles south of the present Cape Henlopen, and ten miles south of the city of Washington. If the words "up to that part of Delaware Bay that lieth under the fortieth degree," refer to the fortieth parallel, assuming that the point where it crossed the Delaware was within Delaware Bay, it would again appear that the grant to Baltimore embraced the territory of the Lower Counties.

If, however, the words refer to the space of sixty geographical miles which lie between the thirty-ninth and the fortieth parallels or near the foot of Delaware Bay which lies south of that space, an absurdity is apparent, because no part of Delaware Bay was south of the space 40°. In this connection it

¹ Hazard, pp. 475-480, 482, 484; *Breviat*, p. 51; Map prefixed to the printed agreement of 1732.

was contended by the Penns in their suit in chancery, that the expression, "as far northward as that part," found in the Maryland charter, meant up to the fortieth degree, but excluding all lands lying within the space of the fortieth degree. As no part of Delaware Bay lay within or under the space of the fortieth degree, very little of the territory of the Lower Counties lay south of the thirty-ninth degree, *i. e.*, south of the thirty-ninth parallel. They urged also that the fortieth degree complete extended beyond where the grant to the New England Council ended. But the fallacious character of this argument becomes evident when we remember that, if the northern boundary of Maryland were thus located at the thirty-ninth parallel, it would fall sixty miles south of the head-waters of the Potomac, and would give Baltimore only the narrow territory between the thirty-eighth and the thirty-ninth parallels. Moreover, the bounds of New England did not extend even so far south as the fortieth parallel. If the words, "lieth under," are taken literally, as if a huge figure 40 lay over sixty geographical miles, then "up to that point of the Delaware Bay that lieth under the fortieth degree," would have the same meaning as in the first case, because all of Delaware Bay was under the fortieth degree. This may seem to be an absurd argument, but it was in fact the very one used on several occasions by Baltimore. For example, in the answer to the Penns' bill in chancery, he stated that his boundaries extended through the fortieth degree complete, and to the end of it, *i. e.*, from the thirty-ninth parallel to the fortieth parallel, and that no part of the lands under the said fortieth degree was excluded from the grant. He declared that the distance from the thirty-ninth degree complete, *i. e.*, at the thirty-ninth parallel to the fortieth degree complete, *i. e.*, at the fortieth parallel, was sixty geographical miles, and that "there was such a quantity or space of land" lying *under* the fortieth degree. Finally, he asserted that all lands under the fortieth degree had been granted to him, and

"not such lands, or so far only as extended or adjoined the said fortieth degree."¹

The Penns claimed that the phrase, "beginning of the fortieth degree," had reference to the entire space between the thirty-ninth and the fortieth parallels.² This would make the southern boundary of Pennsylvania the thirty-ninth parallel, whereas by the charter the southern limit was the straight line beginning twelve miles from Newcastle. The use of the word "beginning" was most unfortunate, for had the words been "twelve miles distant from Newcastle to the fortieth degree," the meaning would have been clear, as the fortieth parallel was believed to pass through Newcastle. In fact the charter itself admits that the forty-third degree and the beginning of the forty-third degree were the same, for it states that the province should be bounded on the east by the Delaware River from the point twelve miles north of Newcastle *to the forty-third degree*, and on the north by the *beginning* of this degree; we are certainly at liberty then to assume that what was true in the one case was true also in the other, and that the fortieth degree and the beginning of the fortieth degree were used in the charter as synonymous terms. Had this been observed, the contest over what was meant by the beginning of a degree must have soon ceased, to the discomfiture of the Penns.

¹ *Breviat.*

² It seems hardly accurate to speak of the beginning of a degree, but if, for example, we take the space between the equator and the first parallel, its beginning is obviously at the equator and its end at the first parallel, as in the computation of time every second after 1800 is called the 19th century. Hence the space of the fortieth degree would be the section between the thirty-ninth and the fortieth parallels. Indeed Baltimore in this same reply to the bill in chancery claimed that the grant of Maryland included all lands up to the fortieth degree, and that such an expression would be improperly applied to any region other than the full extent of the degree, because, until it came to the extent of the degree it would be only 39° 59', and so many seconds. But the Penns observed that 39° 59' was under the fortieth degree. So also, rejoined Baltimore, was 39° 1', and every hair's breadth from 39° complete to 40° complete, as *e. g.* 90' was under the second degree, for it was beyond the extent of the first degree. *Ibid.*

After having thus disposed of the location of the fortieth degree according to the geographical knowledge of the 17th century, we may consider the meaning of the phrase in the Maryland charter, "*hactenus inculta*," etc., "hitherto uncultivated" in the parts of America, and partly occupied by savages. In the first place, these words occur only in the preamble, and form no part of the territorial grant proper. But as already stated, the settlement established by the Dutch previous to 1632 had been abandoned when the Maryland charter was issued. Subsequently, however, the Dutch resumed possession and the Swedes had taken up land. Still although Baltimore was given the power to wage defensive war, even had circumstances allowed him so to do, he would scarcely have dared to involve himself in a conflict with the Swedes or Dutch, when Sweden and Holland were at peace with England. Thirdly, as early as 1635 a map drawn according to his direction shows that he believed the northern line of Maryland extended from about twenty-five miles west of the Susquehanna to five miles south of where Newcastle later stood.¹ This indicates that he regarded the fortieth parallel as his northern boundary, and in this belief he sent several messages to the Dutch, warning them to cease exercising jurisdiction over territory that was his by the terms of his charter.²

In this connection it may be remarked that the claim set up by the Penns to the effect that the king could not grant any of the territory held by the Dutch, because it had not been discovered by English subjects, is weakened by the fact that the grant by James I. to the London patentees in 1606, embraced the region in question and was based on the discovery made by the Cabots. On the other hand, previous to the time when

¹ Map prefixed to the printed agreement of 1732.

² In 1660 he ordered his attorney, Capt. Neal, to protest in Holland against the encroachments of the Dutch, and to demand their surrender of the region. Hazard, pp. 258 *et seq.*, 317, 327.

the region was conquered by the English, Baltimore had not exercised jurisdiction over it. For this reason his title may be regarded as defective. Still it is true that Penn's title, as derived from the Duke of York, was far less valid.

Let us now trace the events leading up to the agreement of 1732. Penn, soon after his arrival in Pennsylvania, arranged a meeting with Baltimore. At this conference he presented a letter from the king, dated April 2, 1681, stating that, as Baltimore had only two degrees, he should measure from Watkin's Point northward, 60 miles to a degree, and ordering both parties to appoint commissioners to determine the boundaries. According to Smith's map, Watkin's Point lay between 38° and $38^{\circ} 10'$, and 120 miles north of this would locate the northern line of Maryland near the centre of Newcastle. Baltimore replied that the king was mistaken, and that he would not allow his patent to be questioned by any such means. Penn thereupon declared that in 1680, when negotiating for the grant of Pennsylvania, he had petitioned the king at first for five degrees of latitude, but because some of the members of the Privy Council reminded him that Baltimore had only two degrees, he had agreed to a grant of three degrees. He further intimated that in Baltimore's charter the presumption was that Watkin's Point was in latitude 38° , else Virginia, since it should extend to the 38th degree, would suffer encroachment. Baltimore did not favor this proposition of the two degrees. Then Penn pressed him to measure two and one-half degrees from Watkin's Point, and if he would consent to do this on the estimate of sixty miles to the degree, the southern boundary of Penn's province should be at the fortieth parallel, wherever it might fall. Ignorance of the distance from Watkin's Point to Newcastle, as well a cautious policy to avoid anything that might resemble an admission of Penn's claims, caused Baltimore to decline this very advantageous offer. A line 150 miles north of Watkin's Point would have fallen nearly twenty miles north of Philadelphia, and had Penn been better aware of the topo-

graphy, he would never have made such a blunder. Other conferences followed, but without result. Thereupon Baltimore issued a proclamation offering land in the disputed region at lower prices, and in greater quantities than Penn was disposed to concede. He told Penn, however, that this was done merely to renew his claim, not with any intention of encouraging settlement, still he refused to recall the proclamation when requested so to do. Penn hinted that he might be made accountable to the king in council. Baltimore laconically rejoined that he had nothing to do with the king and council, and would take his right wherever he could get it. Pursuant to this, in 1683, he had a line surveyed from the mouth of Octorara creek, at which spot he built a log fort, north east to the arc of the circle twelve miles from Newcastle. This was six or eight miles north of his predecessor's line of 1635, which it will be remembered was nearly coincident with the fortieth parallel.¹ Thereupon Penn, despairing of any peaceable agreement, wrote to the Committee of the Council for Plantation Affairs. He rehearsed the outcome of his conferences with Baltimore. He protested against Baltimore's version of them. He asserted that the land included in the patent of Maryland was only that inhabited by savage tribes, and that Baltimore had never taken the Lower Counties from the Dutch, and had never properly ascertained the bounds of Maryland. For these reasons he believed Baltimore had forfeited all claims to the Newcastle country; but desired that at all events he should be forced to run his boundary line from Watkin's Point to the beginning of the fortieth degree, *i. e.*, to the thirty-ninth parallel.²

¹ *Breviat*, pp. 74-5.

² Penn MSS., Ford *vs.* Penn. It is curious to note what erroneous ideas were prevalent concerning the topography of the country. Penn wrote to the Marquis of Halifax that Baltimore did not need the territory north of the thirty ninth parallel, because he already had a country 200 miles in length upon both sides of Chesapeake Bay. *Mem. Pa. Hist. Soc.*, i, pt. ii, pp. 415, 421.

The entire length of Chesapeake Bay is not quite 200 miles, and even granting

Baltimore's agents, in May, 1683, petitioned the king that the previously outlined grant to the Duke of York, dated April 13 of that year, should not pass the seal until the matter in controversy was settled. In the hearings before the committee of council, Penn and his attorneys constantly employed the duke's name, probably trusting to the influence such a proceeding might have. Occasionally the duke's counsel also participated in the discussions. Penn pleaded among other things not only the great expense he had incurred by settling the province and Lower Counties, but also the fact that in 1683 and 1685 he had purchased from the Indians tracts of land extending from Duck Creek and Chester Creek, and from the Delaware westward as far as a man could ride in two days. Baltimore replied by showing a copy of an order in council, dated April 4, 1638, which gave to his predecessor the possession of Kent Island. By reference to Smith's map it would be seen, he said, that it lay several miles north of the thirty-ninth parallel. If Kent Island thus was within his bounds by charter, certainly all lands to the eastward of it, as far as Delaware Bay or the ocean, were so included.¹ At length, upon the recommendation of the committee, an order in council was issued, November 7, 1685, which stated that upon examination of the matters in dispute between Baltimore and Penn, the committee found that the land intended to be granted by the patent to Baltimore was only that which was uncultivated and inhabited by savages. It was believed that the tract in dispute was inhabited and cultivated by Christians in and before 1632, and that it had always been a colony distinct from Maryland. Hence it was ordered that the region bounded on the east by the ocean and the river and bay of Delaware, and on the west by Chesapeake

Baltimore's claim that Watkin's Point lay in 37° 48' north latitude, if his northern limit was to be the thirty ninth parallel, his water front on Chesapeake Bay would not exceed 75 miles.

¹ *Breviat.*

Bay, should be divided into equal parts by a line drawn from the latitude of Cape Henlopen northward to 40° north latitude, the eastern half of which should belong to the king, and the western half to Baltimore.¹ In view of the fact that James was personally interested in the affair, it is not remarkable that such a decision was rendered.

Baltimore despairing of any present relief connived at various petty expeditions from Maryland into the Lower Counties. Outrages were numerous.² Settlers under the jurisdiction of Pennsylvania were brought before the Maryland courts, visited with indignities, and driven off their lands, while their houses were burned and their crops and cattle destroyed or stolen. At length Baltimore made another attempt to oust Penn from his possession. January 9, 1708, he petitioned Queen Anne to set aside the order in council of 1685, on the ground that it had been surreptitiously obtained, and was false in its statements. He therefore requested that the line of division between Pennsylvania and Maryland should be determined, and that the Lower Counties should be adjudged to lie within his jurisdiction. This being referred to the Board of Trade, Penn told the members of that body that they were not the proper judges, and could not disturb an order in council. Upon complaint to the president of the council he was advised to send in a counter petition. In it he cited the directions issued in 1685, and pleaded the expense he had undergone, the improvements he had effected, and his quiet possession for many years. He therefore desired that the petition from Baltimore be dismissed.³ When his request was granted, Baltimore, May 19, 1709, sent in another petition of the same tenor as his previous one, asserting the falsity of the counter petition,

¹ In their proceedings in chancery the Penns endeavored to strengthen their claim by showing that as the order was directed to Penn and Baltimore, it would be rather unusual for the king to direct Penn to run a line for the king himself. *Ibid.*

² *Col. Rec.*, i, pp. 104, 115, 188, 515. ³ *Mem. Pa. Hist. Soc.*, i, pt. i, p. 209.

and declaring that in the proceedings of 1685 he had never been heard in his own defense. This statement was disproved at a hearing in council, his petition was again dismissed, June 23, 1709, and the order of 1685 was confirmed and commanded to be put in execution.¹

Then the petty disturbances in the Lower Counties were renewed, and the governors of Pennsylvania retaliated by proclamations to apprehend and punish the invaders. The governors of Maryland continued to offer lands at reduced rates to encourage settlements in that region. Notices were posted up bidding persons who held their lands by grants from Penn, and who wished to have their titles respected, to make application to Baltimore's agents. But the tide was steadily setting against the Maryland proprietor. Ever since the appointment in 1693 of Benjamin Fletcher as royal governor of Pennsylvania and of the Lower Counties as territories dependent thereon, the Lower Counties had been looked upon as a part of Pennsylvania. The governors of the province with the approbation of the crown had for many years exercised jurisdiction over them. The assembly of Maryland by acts passed in 1704, 1707, 1715 and 1724 acknowledged that they were annexed to Pennsylvania. A large number of the inhabitants, however, refused to pay rent to either Baltimore or Penn. Hence, February 17, 1724, six years after the death of the Pennsylvania proprietor, Charles, Lord Baltimore, entered into an agreement with Mrs. Penn, that no person should be disturbed in his possession, and that for the period of eighteen months no lands near the boundary line of either province should be surveyed or taken up. A proclamation to this effect was issued by Gov. Keith of Pennsylvania May 15, 1724, but the death of Mrs. Penn, the infancy of the young proprietors, and the neglect of Baltimore renewed the confusion.² The governors of the two provinces held many conferences, which usually resulted in a series of empty promises easily broken.³

¹ *Breviat.*

² *Ibid.*

³ *Pa. Arch.*, 1st series, i, pp. 320-488.

Then Baltimore petitioned the king, July 31, 1731, to order the Penns to join with him in settling the boundaries; but in case they refused, or in case the boundaries were not definitely settled within twelve months, that the matter should be determined by royal decision. The Penns at that time were not well acquainted with the details of the dispute, and could not readily secure the necessary evidence to prove their title. In a conference between the attorneys of the respective parties it was stated that, if the Penns did not agree to the extension of the Maryland boundary northward to within fifteen miles of Philadelphia, Baltimore would again set up his claim to the Lower Counties. Though the agents for the Penns strenuously insisted on 18 or 20 miles south of Philadelphia as the northern boundary of Maryland, this demand of Baltimore was at length complied with. Before the final agreement, however, Baltimore insisted that all members of the Penn family holding lands in Pennsylvania should attach their signatures to the articles, and made several other stipulations to which the Penns acceded, and which were later embodied in the agreement itself. This was dated May 10, 1732, and ran as follows: It was to be based geographically on a certain map which was prefixed to it. The circle mentioned in the charter of Pennsylvania and the deeds of enfeoffment, should be drawn at 12 English statute miles from Newcastle. A line was to be run from Cape Henlopen directly west to the exact centre of the peninsula, and from its western end a perpendicular line was to be drawn northward till it touched the extreme western point of the circumference, thus making a tangent. From this point again a line should be traced due north till it reached a point fifteen statute miles south of the most southerly part of Philadelphia. Starting at the northern end of this line, another should be run directly west across the Susquehanna to the limit of longitude; but as the western lands were then unsettled it was stipulated that for the present the line should not extend further than 25 statute miles

west of the Susquehanna. Furthermore, it was agreed that if the northern extension of the tangent line intersected the circle, so much of the circle as was cut off should belong to Newcastle, provided that in case the head of any river flowing into the Chesapeake, the Delaware, or the ocean, should be on one side of the boundaries indicated, and the remainder on the other, then the inhabitants of the province or counties within whose limits the head of the river should fall, were to be forbidden the use of the lower part of the river for commercial purposes, without the consent of the proprietor of such lower part. It was also agreed that within two months the respective proprietors should each appoint seven commissioners, whose duties should be to act with all fairness and dispatch in the prosecution of their work, which was to begin not later than October, 1732. The boundary lines should be designated by stones, posts, trees, pillars, buildings and the like, marked on one side with the arms of Baltimore and on the other with the arms of Penn. The lines having been determined before December 25, 1733, an exact plan of the survey was to be signed and sealed by the commissioners and principals and entered in all the public offices in the two provinces and counties. Then the respective proprietors agreed to recommend to the assemblies the passage of acts for the visitation of the boundaries on certain fixed days triennially, in order that the limits might remain accurately determined.¹ If a quorum of the commissioners did not attend to the running of the lines, the agreement was to be void, and the defaulting party liable to a forfeiture of £5,000. Then Baltimore and

¹ William Penn by a warrant, dated Oct. 28, 1701, had directed certain surveyors and justices of the peace to survey from Newcastle twelve miles up the Delaware, and from this distance to divide Newcastle and Chester counties by the circular line. This was marked two-thirds of the distance by notches on trees; but Newcastle county levied taxes on inhabitants of Chester county, on the ground that the line had been illegally run. Therefore the provincial assembly in 1715 passed an act to confirm this boundary, but it was repealed by the king in council, July 21, 1719. Bradford, *Laws of Pa.*

the Penns renounced all claims to territory other than that which lay within their respective limits as thus traced. Exception, however, was made of grants which had been made to individual settlers within what had been disputed territory. In order to secure these settlers it was further stipulated that each party should copy grants, leases, or warrants made by authority of the other prior to May 15, 1724, and upon receipt of the accustomed fees should issue new grants of the same tenor, provided the grantees became tenants of the present proprietor, and liable to all rents, arrears and duties according to the original deeds. Finally, in cases during the dispute, where a title for lands in the disputed region had been taken from both parties, or where land had been settled without permission from either, such settlers, if they consented to hold of the new proprietor should be treated with moderation.¹ It is thus to be noted that Baltimore gave up his right to the Lower Counties, except so far as uncertainty existed about the location of Cape Henlopen.

The commissioners were appointed, and, November 24, 1733, reported that at several meetings the representatives from Pennsylvania had insisted upon surveying the circumference of a circle at twelve statute miles from Newcastle; but that the Maryland commissioners construed the wording of the deeds of enfeoffment, viz., "all that town of Newcastle, and the tract of land lying within the compass or circle of twelve miles about the same," as meaning that a circumference of only twelve miles in length should be drawn, thus making the radius less than two miles instead of twelve. Thereupon the commissioners from Pennsylvania refused to proceed further, and the matter was referred to the principals.

On August 8, 1734, Baltimore presented a petition to the king, praying that by letters patent he might be put in possession of the Lower Counties. To support this request, he cited the phraseology of his charter, the order in council of

¹*Breviat.*

1638, and the alleged fact that prior to his grant the territory had not been occupied by Christians or by subjects of Great Britain. But he was careful to make no allusion to the agreement of 1732, or to the fact of possession by the Penns up to that time. The petition as usual was referred to the Board of Trade, which reported to the committee of the council that the Lower Counties appeared to be included in the grant to the present Lord Baltimore's ancestor, but for many years had been in possession of the Penns; that since 1702, when Andrew Hamilton was appointed governor, the declaration of the king's right to them had been made when each successive governor was approved, and that the Penns had been summoned, but had refused to answer concerning the matter. It was, therefore, left to the king to decide whether the order of 1685, at which time William Penn had acted as agent for the Duke of York, or the order of 1638 should have the greater consideration; but it was believed the latter would be more likely to show the real intention of the crown. The committee of the council then heard the attorneys for both sides, but Baltimore was the more strongly represented. An order in council was accordingly issued, May 16, 1735, which stated that the report of the Board of Trade and two petitions presented by the Penns had been considered, and recommended that the decision of the question should be postponed; but that in the meantime the Penns should proceed in a court of equity to obtain relief on the articles of agreement.¹ Later either party might apply to the committee of the council, as the nature of the case should require.

A short time after this the Penns presented in chancery a bill which contained all the points of dispute most exhaustively

¹ The Privy Council refused to take cognizance of the case, because its jurisdiction was held to be confined only to "original, unsettled, conflicting, chartered grants of colonial territory," and therefore the case should be tried before an essentially judicial tribunal. Penn MSS., *Autograph Petitions*; *Ibid.*, *Corresp. of the Penn Family*; T. P. to John Penn, Nov. 24, 1736, and to Peter Colinson, Aug. 1, 1737.

stated.¹ In it they charged Baltimore with making large grants of land without indicating their location, and that by having them surveyed in the disputed territory, the agreement was frustrated. They prayed for an answer to a long list of questions, and asked for liberty to examine witnesses. They desired quiet possession of the Lower Counties, that the agreement should be declared in full force and be properly executed, that the pretended doubts as to fixing a centre for the circle around Newcastle, the dimensions of the circle, and the distance from the town, should be removed; and that Baltimore should give further assurances that he would perform the agreement, and settle through a master in chancery all differences which thereafter might arise. Finally, they requested that Baltimore be compelled to pay costs, and that due relief in every sense should be rendered them.

At first Baltimore refused to answer. Thereupon, July 29, 1735, the Penns obtained from the chancellor an order for sequestration, unless good cause to the contrary could be shown. Baltimore in turn obtained an order to refer the bill on the ground of scandal and impertinence; but a master in chancery deciding adversely, he was forced to answer. His lengthy reply contained a general denial of the allegations made by the plaintiffs, and was replete with all kinds of legal devices to make the case as intricate as possible.² It would be tedious and useless to consider the truth or falsity of the individual statements of both parties.³ Baltimore claimed, however, that the

¹*Breviat.*

² Among the ingenious arguments used by the attorneys for Baltimore was the following: The Maryland proprietor was by the crown deprived of governmental rights from 1692 to 1715; and as the Lower Counties had not been sufficiently wealthy to maintain a governor, the governors of Pennsylvania had been permitted temporarily to exercise authority, until Baltimore could prefer a petition to the crown to establish him in possession. *Ibid.*

³ They may be seen at length in the *Breviat*, in the Penn MSS., Penn *vs.* Baltimore, or in the MS. volume of 833 pages, called the "Decree of the Chancellor." in the library of the Pennsylvania Historical Society.

action of his commissioners had been fair, and that the agreement of 1732 was invalid by reason of the lapse of time. Hence he desired that it should be cancelled, and costs decreed against the Penns. As a further sign of his evasive policy, alleging that fraud had been committed in obtaining the articles of agreement, he again petitioned the king, April 21, 1737, to be put in possession of the Lower Counties, or at any rate that no governor recommended by the Penns should be appointed over them until the dispute concerning the validity of the articles was settled. He desired that in the meantime the king would directly appoint the governor, and send orders to reassure the settlers on the lands near the boundaries.¹ Several petitions had also been sent from Maryland and Pennsylvania complaining of outrages committed on the borders, and asking for the king's interposition, in order that peace might continue until the boundaries were established. The Board of Trade reported that while the suit was pending, since the Penns for many years had regularly appointed governors under proper reservations, it did not advise any change in the method of appointment. Then, August 18, 1737, another order in council was issued, commanding that the governors of Maryland and Pennsylvania, under pain of the king's displeasure, should take measures to suppress further tumults on the borders. They were also bidden to make no grants of the land in dispute, nor of any in the Lower Counties, and not to permit any person to settle there till the king's pleasure was known.

But the complaints continued. Hence the committee of the council summoned all the proprietors to answer them. The exigencies became so pressing that the Penns and Baltimore made another agreement, May 25, 1738.² This provided that so much of the previous order in council as related to the preservation of the peace on the borders should be observed,

¹ *Breviat*, p. 73.

² Hazard, *Register of Pa.*, ii, pp. 200, 209, 225.

but should not affect the Lower Counties proper, for no riots had been reported there; that all other lands in controversy should remain in the hands of the present possessors, even if beyond the temporary limits; and the jurisdiction of the particular proprietor should continue over such persons till the boundaries were adjusted. Furthermore, it was agreed that the tenants of neither party should attorn to the other, nor should either of the parties or their officers receive the attornments of the other's tenants; and that all vacant lands in dispute, not lying within the Lower Counties, nor actually possessed by either party, if they were on the east side of the Susquehanna and north of a line $15\frac{1}{4}$ miles south of the most southern part of Philadelphia, or if on the west side and $14\frac{3}{4}$ miles south of Philadelphia, should be regarded as temporarily under the jurisdiction of Pennsylvania; but all vacant lands south of that line should be similarly under the jurisdiction of Maryland. The proprietors were also allowed to grant on the common terms any of this vacant land within their respective limits, for which each of them should account to the other, if he was adjudged the proper owner when the boundaries were finally settled. It was also stipulated that prisoners concerned in the disturbances should be discharged, upon their entering into recognizances to appear and submit to trial when ordered by the king. Lastly, this agreement was not to redound to the prejudice of either party, and the king was desired to annul so much of his previous orders as differed from the foregoing. This was immediately approved by the king and ordered to be executed.

During the course of the suit in chancery the question at issue became still more involved by the new contention of Baltimore respecting the location of the fortieth parallel. It seems that the Maryland proprietor in 1714 sent over certain instruments to be used in determining astronomically the parallels of latitude. By this proceeding it was found that the fortieth parallel was located about five miles north of Philadel-

phia, and the thirty-ninth parallel the same distance south of the present city of Washington. Baltimore contended that the fortieth parallel should be determined according to present measurement. The Penns in turn urged their claim to the territory as far south as the thirty-ninth parallel. This contention properly had no weight with the chancellor. Then Baltimore endeavored to prevent a decree by a continuation of his policy of inventing all kinds of frivolous objections and captious criticisms. But when he saw that the coming decision was likely to be adverse, he demanded that the southern line of the Lower Counties should be traced directly west from the present Cape Henlopen, no matter where it was presumed to have been formerly located.

It may be said that the situation of Cape Henlopen, and the derivation of the name, were matters of considerable doubt. We have seen by the projected grant to the Duke of York in April 1683, that Cape Henlopen was known as Cape James, so named by Penn in honor of his patron. Moreover, in the deeds of enfeoffment of August 1682, the Hoarkills (or Whore-kills) were called Capin Lopen.¹ If this is true, then the present Cape Henlopen was intended, because it is situated very near the Hoarkills, which is a creek near the present town of Lewes. But the order of 1685 described the ocean as bounding the Lower Counties on the east, which it could not do if the cape was at the entrance to Delaware Bay; and in the map prefixed to the agreement of 1732 the present Cape Henlopen is called Cape Cornelius, for it was believed that Captain Cornelius May had called the Delaware cape and the Jersey

¹ The language of the act of union passed at Chester, Dec. 7, 1682, and which united the province and Lower Counties is as follows: "Forasmuch as all that tract of land lying on the west side of the river Delaware, beginning from twelve miles above Newcastle northward, and extending to the south cape, commonly called Cape Henlopen, making the mouth of the Bay of Delaware, of late divided into three counties, and called by the names of Newcastle, Jones and Whore-Kills, alias Deal." *Charter and Laws of Pa.*, p. 104.

cape after his own name. Various old Dutch and Swedish maps of the 17th century also indicate that the point of land called Cape Henlopen was about 25 miles south of the so called Cape Cornelius. The Penns claimed that the word "Henlopen" was derived from a Dutch word¹ signifying "to recede," or "run away," because mariners at some distance out saw a jetty of land which had the appearance of a cape, but as they approached, it disappeared, and only a number of rocks were visible. Thus it was often called the "False Cape," in contradistinction to Cape Cornelius at the entrance to the bay. But in the course of time the name Cornelius was replaced by Henlopen. Baltimore's witnesses on the other hand endeavored to prove that "Henlopen" was derived also from a Dutch word signifying "to flow in." Cape Henlopen, according to their argument, had always been situated at the mouth of the bay. Thereupon the Penns showed that, although the most southern county had changed its name successively from Hoarkills to Deal, and finally to Sussex, it was always believed to extend at least twenty miles south of Lewes, for the inhabitants of that region regularly attended the Sussex County court.² A line drawn westward from the present Cape Henlopen would cut off a large portion of Sussex County. Hence this proposition of Baltimore's shared the same fate as his previous contention.

The case was carried on at great expense. Prominent crown lawyers were employed on both sides; and many witnesses were examined in England and America.³

Finally, May 15, 1750, Lord Chancellor Hardwicke pronounced his decree.⁴ He called attention to the chicanery of Baltimore in endeavoring to evade the agreement of 1732, and

¹ Dr. O'Callaghan (*Hist. of New Netherland*, i, p. 73), says that Cape Hindlopen was named after a town in the province of Friesland.

² *Breviat; Mem. Pa. Hist. Soc.*, i, pt. i, pp. 190, 191.

³ Penn MSS., *Penn vs. Baltimore*.

⁴ *MS. Decree of the Chancellor*.

the great expense the Penns had been forced to undergo.¹ He thought that the Duke of York was a trustee for William Penn, and had the territory been at that time in the hands of a subject, he would have ordered that the contract to confirm possession should be fulfilled.² Hence he decreed that the articles were obligatory, and should be fully executed by the parties in spite of the limitation of time. But this proceeding was not to prejudice any claim based on the title of the Duke of York or any other title which the crown might set up, nor the possession of settlers over whom the parties might have had no power. He therefore commanded that the plaintiffs and defendants within three months should appoint commissioners to ascertain the boundaries. These commissioners should act with fairness, and begin proceedings by November, 1750, so that the lines might be duly surveyed by April 30, 1752, at which time properly attested copies of the plan of survey should be entered in the public offices according to the agreement, and delivered also to the respective parties. Questions on which they might not agree should be referred to a master in chancery. Concerning the location of the circumference of the circle, he declared that the intention of the articles was that the centre of the circle should be the middle of the town of Newcastle, and its radius twelve miles. Cape Henlopen he thought should be considered situated at the place mentioned in the map prefixed to the articles, *i. e.*, 25 miles south of the present cape. After the boundaries had been determined, the parties were to make the necessary releases and assurances according to the agreement, and at the cost of the party desiring them. If the crown interposed any

¹ *Vesey's Reports*, p. 455.

² The solicitor-general advised the Penns to petition the king to make good the Duke of York's assurances of confirmation; while the attorney-general did not attempt to stop the execution of the agreement on the pretense that without direction from the crown the parties had no right to enter into it. P. L. B., ii, T. P. to Hamilton, May 16, 1750.

objections, the parties were again to apply to chancery for further directions. The Penns were ordered to pay Earl Powlett, one of the trustees to whom William Penn by will had confided the government of Pennsylvania and the Lower Counties, any expenses he might have undergone during the suit, while Baltimore was to pay the entire costs of the suit as ascertained by a master in chancery. Lastly, the chancellor reserved consideration of further costs and directions until the time limited for performance of the agreement had expired; and both parties were allowed to resort to the court whenever occasion should require it.

The commissioners met at Newcastle, November 12, 1750, and agreed on a centre; but immediately a dispute arose concerning the measurement of the radii of twelve miles. Baltimore's representatives contended that they should be computed superficially; but the Pennsylvanians maintained that on account of the various inequalities of the ground, the radii measured by this method would not extend to points equidistant from the centre, and hence a true circumference could not thus be drawn. Therefore they insisted upon astronomical and geometrical measurement. This was another scheme of Baltimore to frustrate the agreement. Manifestly if the incline of every hill or depression, as well as the level ground in each twelve miles were measured, the radii as measured on the horizontal would terminate at unequal distances from Newcastle, and through their terminations no circumference could be drawn. Thereupon the Penns applied to the chancellor, setting forth the new objections, and desired that the distances from both Newcastle and Philadelphia should be measured horizontally, not superficially. The request was granted.¹

Then the commissioners in April, 1751, agreed that a line should be run due west, and properly marked from a point on the shore of the ocean 139 rods due east from a stone already

¹ Agreement of 1760.

fixed on the northern part of Fenwick's Island (near the former Cape Henlopen), across the peninsula to Chesapeake Bay. From the centre of this east and west line another line should be drawn northward, until it formed a tangent with the circumference of the circle. This was subject however to alteration or confirmation by the chancellor, or by a joint order from their principals. The surveyors fixed the east and west line as far as Slaughter's creek, but the Maryland commissioners insisted that the line should go no further, *i. e.*, that its length should be 66 miles, 248½ rods. The Pennsylvania commissioners declared that the line should touch the shore of the bay, *i. e.*, that it should be 69 miles, 298 rods in length. The deadlock continued till November, 1754, when the Penns exhibited in chancery a bill of revive and a supplemental bill of complaint, and obtained an order to revive the proceedings.¹

On behalf of Frederick, Lord Baltimore, his guardians in March, 1755, pleaded certain leases and releases as a bar to the relief sought, and insisted that his rights to the Lower Counties should not be affected by his father's articles of agreement. Thereupon, by permission of the chancellor, the Penns in September, 1755, filed an amended bill of revive for specific performance of the articles, and for security for the payment of the costs as formerly decreed and of such as might be incurred by non-execution of the articles. At length Frederick, wearied of the struggle, in 1760 entered into a final agreement with the Penns. This provided that the east and west line should extend 69 miles, 298 rods; so that its exact centre should be 34 miles, 309 rods from the fixed point on Fenwick's Island. At this middle point of the line were to be placed several large stones, of which those facing to the south and west should have the arms of Baltimore marked on them,

¹ If the Penns could have induced Baltimore to agree to the bill of revive, they would have endeavored to procure from the crown a charter for the Lower Counties. P. L. B., ii, T. P. to Peters, June 10, 1754.

while those facing north and east should bear the arms of Penn. Baltimore consented also speedily to appoint commissioners to carry out the articles, and promised to indulge in no whimsical objections, and not to acquiesce in the prosecution of any suit by his tenants, whereby the right of the Penns to Pennsylvania and the Lower Counties, as bounded in 1732, might be questioned or impaired. Lastly, it was stipulated that Baltimore should make such additional assurances of his intention to render the articles and the decree effectual that further suits should cease, and the Penns be confirmed in their possession. Two years later the chancellor ordered it to be executed.¹

Commissioners were again appointed, but the actual work of running the lines was entrusted to two expert surveyors, Charles Mason and Jeremiah Dixon.² Differences of observation or measurement, on which the respective commissioners could not agree, were divided equally between the Penns and Baltimore; but difficulties in exactly determining the tangent line and the northern boundary of Maryland, caused the survey to be protracted during several years.³ In 1767 Mason and Dixon finally located the northern boundary of Maryland at 39° 44', and extended it westward about 230 miles from the tangent line. At intervals of five miles they placed the marked stones, several of which are still standing, and smaller stones at every mile; but throughout the last hundred miles of the distance, where transportation by carriage was impossible, the line was indicated by heaps of stones on the mountain ridges, as far as the summit of the Alleghanies, beyond which again it was marked by posts surrounded by stones and earth.⁴ The agreement and proceedings in determining this line, as well as the

¹ P. L. B., vii, T. P. to Hamilton, March 6, 1762.

² Penn MSS., T. P. to Peters, March 13, 1761; April 13, 1762.

³ P. L. B., vii, T. P. to Peters, Hamilton, and the commissioners, Jan. 18, and Feb. 12, 1763; May 24, 1765.

⁴ Latrobe, *History of Mason and Dixon's Line*.

southern and northern boundary of the Lower Counties, were ratified by an order in council, January 11, 1769, and proclamations were issued to quiet the settlers in their possession. Thus by the running of "Mason and Dixon's Line" one of the most remarkable boundary disputes in the history of the American colonies was brought to an end.

II

Connecticut.

THE extraordinary claim put forth by this colony to the land in the fertile Wyoming Valley is interesting, because it is an example of the shrewdness so characteristic of New England people. Nothing was heard of any territorial rights there until the land had become valuable by reason of adjacent settlements. Then the New Englanders realized that they were in possession of a piece of paper which promised them enormous tracts far away to the westward, and they saw the necessity of speedy action if they wished to make good their title. The Connecticut-Pennsylvania claim rested on three considerations, viz.: the terms of the charters of the two colonies, Indian titles, and actual possession. The scheme appears to have originated in Windham County, for in March, 1753, a number of residents in that county submitted the proposition to the General Court. Utterly ignoring the Pennsylvania charter, and with possibly a recollection of the attempts of New Haven to establish a settlement on the Delaware in the middle of the seventeenth century, they called attention to the land on the Susquehanna, alleging that for a distance of seventy miles west of the Delaware it was unsettled, and that by charter it was within the territorial bounds of Connecticut. They stated that a company, then in process of formation, desired the General Court to grant it a quit claim for land sixteen miles square on both sides of the Susquehanna. They promised also to purchase the territory from the Indians, and within three years to have it duly settled. Of course it was to be subject to the jurisdiction of Connecticut.

After the plan had been approved by the Court the "Susquehanna Company" was formally organized.¹

The Connecticut claim, so far as there was any apparent basis for it, was founded on the royal charter of April 23, 1662. This purported to give to the governor and company of Connecticut all the territory bounded on the east by Narragansett Bay, on the north by Massachusetts, and with this breadth stretching westward to the Pacific.²

As the Dutch interests had been established along the Hudson, there was much less reason for so extensive a grant than when the early colonial charters were issued. All that may be said in justification is, that it was consistent with what had always been the claims of the English. The Penns believed that the purpose of the king was to bestow only the territory which had not been granted between Massachusetts and Plymouth on the north and east, and the Dutch settlements on the west, but not any territory west of the Delaware. In fact, March 12, 1664-5, the first grant was made to the Duke of York. This was followed by the conquest of New Netherland. Thenceforward an English province existed along the banks of the Hudson, and must be an obstacle in the way of the indefinite extension of Connecticut westward. The result of this grant and conquest was apparent when, in December, 1664, the royal commissioners, Nicolls, Cartwright and Maverick, with the consent of delegates from the Connecticut General Court, fixed the western boundary of that colony at the Mamaroneck

¹ Larned, *History of Windham County*, i, p. 556 *et seq.*

² The ingenious location of this territory by Rev. Dr. William Smith, of Philadelphia, is interesting in this connection. He proceeded on the general theory that colonial grants were based on the Atlantic water front, and extended perpendicularly into the interior. He based the Connecticut territory on a line extending a little south of west from Point Judith to Greenwich. He then laid the grant on this line, running back a little west of north to the South Sea, which he intimated might be Lake Champlain. But this can hardly be a correct construction of the lines, for the grant would include all of western Massachusetts, an interference which it is not to be supposed was intended by grantors or grantees. See Smith, *An Examination of the Connecticut Claims*, etc., Philadelphia, 1774.

river, and a line drawn northwest from its source. Its southern boundary was settled in accordance with the terms of the grant to the Duke of York, so that Long Island was put under the jurisdiction of New York. With a few slight changes these boundaries were ratified, November 23, 1683, by articles of agreement between Gov. Dongan and the council of New York on the one hand, and the governor and commissioners from Connecticut on the other.¹ The settlement of the boundary was finally confirmed by an agreement dated May 14, 1731, between commissioners appointed from the two colonies.

Whether this was to be construed as an absolute prohibition, and that Connecticut could not thereafter assert any claims beyond the bounds of New York, was not expressly determined. The supporters of the later claims of Connecticut insisted that the settlement of the boundaries in 1664 was intended merely to determine the rights of the Duke of York in territory formerly owned by the Dutch, and could not prejudice the rights of the governor and company to any territory west of his limits. Because the land west of the Delaware river was not directly claimed by the Dutch, they thought it was the property of the crown at the time of the Connecticut grant, and was not re-invested in the crown by any settlement of boundaries. Moreover, when events were rapidly leading to a formal support of the Susquehanna Company by direct action of the colony, certain prominent crown lawyers were asked in 1773 to give their views of the case. They expressed the opinion that the words of the charter of 1620, limiting the grant to lands not "actually possessed and inhabited by any other Christian prince or state," did not apply to lands west of the Dutch possessions. They believed that the agreements between New York and Connecticut were intended merely to settle the boundaries between those colonies, and did not affect the claims of either to other territories. Furthermore,

¹ Penn MSS., *The Wyoming Controversy*.

since the charter to Connecticut antedated Penn's by only nineteen years, there was no reason to presume that the crown could make a valid grant to Penn of a country so recently granted to others.¹ But in answer to this, it is to be noted that the attorney general, when giving his opinion on Penn's petition in 1680, stated that the land west of the Delaware river was "undisposed of, unless the imaginary lines of New England patents, which are bounded westwardly by the South Sea, should give them a real though impracticable right to all those vast territories."² Again, the opinion of the attorney general in 1762 is worthy of consideration. He observed that, if all the colonies in North America were to remain bounded as described in the original grants, none of them had wholly escaped from encroachment. Hence if grants were the only rule, there would be no end of disputes. Other considerations, he thought, than mere parchment boundaries, as possession, acquiescence of the parties, and conformity with the condition and needs of the province at the time of the grant, should have weight in reaching the final decision. He asserted that the western boundary of Connecticut as mentioned in the charter, was barred by the Dutch in 1662, and that the later agreements prevented that colony from advancing beyond the existing limits. His conclusion was that the crown, when prevailed upon to convey a territory belonging to another state then in amity with England, had been deceived. Connecticut therefore had no right to assert any pretensions to charter limits by overleaping the province of New York, and encroaching on Pennsylvania, because he believed that the boundary when so determined left a new grant open to the crown's disposal.³ This view of the attorney-general seems to afford the best practical solution of the difficulties which resulted from the carelessness of the crown in bestowing its easily-acquired dominions. Were the vague words of

¹ *Conn. Col. Rec.*, xiv, p. 447 *et seq.*

² Hazard, *Annals of Pa.*, p. 484.

³ *Pa. Col. Rec.*, viii, p. 621.

the charter of 1662 the only argument, and had the claim based on them been judiciously asserted when the boundary with New York was settled, Connecticut's title would have been very strong.¹

Let us take up now the second consideration, namely that of Indian title. The company, having been organized with a membership of about 700, determined to perfect its claim by a purchase from the Indians. This was accomplished at the famous Albany Conference of July, 1754. Eighteen chiefs of the Six Nations, for the sum of £2000, agreed to sell all the territory claimed. It was bounded as follows: Beginning at 41° north latitude and at a point ten miles east of the Susquehanna, the line extended northerly to 42°, and westward a hundred and twenty miles, thence southerly and easterly so as to inclose a parallelogram of about 7200 square miles.² But this very tract had already been sold several times to the Penns. As already stated in the chapter on Indian affairs, twenty-three chiefs of the Six Nations, Delawares and Shawanese had sold to the proprietors, October 11, 1736, all lands on both sides of the Susquehanna. Two weeks later they executed a deed of confirmation, and promised to sell lands to no

¹ "Connecticut is bounded on the west by New York." Penn MSS., *Wyoming Controversy*, Gov. Wolcott (of Conn.) to the Board of Trade, Dec. 31, 1750.

² At the meeting of the commissioners from the various colonies at this time and place, it was resolved that, although the western boundary of Massachusetts and Connecticut was the South Sea, they should be limited by the Allegheny Mountains. This is about the western limit of the Indian deed to the Susquehanna Company. *Pa. Col. Rec.*, vi, pp. 101, 104.

Subsequent to the purchase by the Susquehanna Company, another organization of persons in Connecticut, called the Delaware Company, secretly bought from certain chiefs all the region between the Wyoming purchase and the Delaware River. Miner, *History of Wyoming*, p. 69.

It may be said, however, that this Wyoming scheme was not confined entirely to residents of Connecticut, for in the Indian deed to the former company were named 638 grantees from Connecticut, 33 from Rhode Island, 10 from Pennsylvania, 8 from New York, and 5 from Massachusetts. Hoyt, *Syllabus of the Controversy between Connecticut and Pennsylvania*; *Pa. Arch.*, 1st series, ii, p. 147.

one but the Penns. A portion of this territory was likewise included in a purchase from the Six Nations by the proprietors in August, 1749. Lastly, the Penns by a deed from the Six Nations, obtained a few hours before that to the Susquehanna Company, bought another tract, which included practically all lands west of the Susquehanna.¹ Hence, so far as Indian sales constitute a real title, the claim of the proprietors seems well supported, though it was argued by the Connecticut partisans that for the Penns to purchase from the Indians lands within the bounds of the Connecticut grant was illegal. Furthermore, the purchase of the Susquehanna Company was attended with considerable sharp dealing, if not with positive fraud. Some of the Indians were intoxicated, and others by smooth promises were inveigled into signing the deed.² In fact the Indian councils in 1755, 1758 and 1763 denied the legality of this sale, and upon learning of an intended settlement by Connecticut people in the disputed section of country, sent a deputation to Connecticut to protest against such an act of trespass, as the lands were rightfully the property of the Penns. The proprietary officers also sent remonstrances to the Connecticut authorities. Then the governor of Pennsylvania wrote to the governor of Connecticut, asserting the exclusive right of the proprietors to all territory within their limits by charter, and protesting vigorously against any intrusion. At the same time he offered to grant the land on reasonable terms to such of the Connecticut people as might wish to settle

¹ *Pa. Col. Rec.*, vi, pp. 120-5; Smith, *Laws of Pa.*, ii, 115, 116, 126, 129.

² Miner, in his *History of Wyoming*, says, "Under the eye of the Pennsylvania delegation a purchase was made by the Connecticut people." But it is certainly absurd to suppose that the proprietary agents would have permitted the sale of any land within the charter limits of Pennsylvania. Further, Sir William Johnson intimated that the purchase was secured by fraudulent means, and in the treaty at Fort Stanwix in 1768, this act of the Connecticut people was a second time characterized in this way. See *Pa. Arch.*, 1st series, ii, pp. 174-5; *Pa. Col. Rec.*, vi, p. 129, x, p. 178; *N. Y. Col. Doc.*, vi, p. 987; Hoyt, *Syllabus*, etc., p. 39; Penn MSS., *Offic. Corresp.*, xi, R. Peters to T. P., May 15, 1774.

there.¹ This failed to meet with approval in Connecticut. Thereupon in 1754 he sent a commissioner to that colony. On his return the commissioner reported, that the governor and other prominent officials in Connecticut declared that the purchase was of a private nature and really contrary to law.²

But whatever was the apparent attitude of the Connecticut officials, the company was strongly supported in its project. Many of the inhabitants, however, denounced the scheme as wild and preposterous, urging the great opposition that might be encountered from the Indians and the distance of such lands from the seat of government. But those interested in the undertaking had good reason to believe that it would be sanctioned by the General Court, and professed a willingness, in case the Penns interposed any objections, to have the matter judicially determined. Indeed they held a convention at Hartford, and chose a committee whose business it should be to make every effort to have members of the General Court elected who were favorable to the project, and would either confirm the Indian title or permit the company to petition the king for a charter of incorporation. Their efforts having been successful, the purchasers applied to the General Court for permission to form a distinct commonwealth, if the king would grant them a charter. The Court thereupon resolved that such a settlement would be a means to secure the friendship of the Indians, and to defend the king's dominions. It also gave the company liberty to make further Indian purchases, and recommended the petitioners to the royal favor.³ The Penns, upon receipt of this intelligence entered in all the colonial offices in London a caveat against the application, whenever it should be presented.⁴

¹ *Pa. Arch.*, 1st series, ii, p. 176; Penn MSS., *Offic. Corresp.*, vi, Gov. Morris to Lieut.-Gov. Fitch, Nov. 20, 1754; to T. P., Dec. 26, 1754.

² Penn MSS., *The Wyoming Controversy*, Report of John Armstrong.

³ The colony proposed would have been almost as large as Connecticut. *Conn. Col. Rec.*, x, p. 378; Trumbull, *Hist. of Conn.*, ii, pp. 470, 474-8.

⁴ Penn MSS, *Supp. Proc.*, T. P. to Peters, Jan. 9, 1761.

Having thus disposed of the claim by Indian title, we shall examine the question of actual possession, and trace the history of the controversy up to its final settlement after the Revolution. The crown lawyers previously mentioned had given their opinion that, if the country had been settled under the grant of 1681, it would be a matter of doubt whether the right of the occupants, or the title under which they held, could be invalidated by a prior grant, without actual settlement. The company, whose membership was rapidly increasing, and which included many persons of prominence, especially in the General Court of Connecticut, determined to lay out 10,000 square miles of the purchase into shares. By the articles of association, each shareholder was bound within a given time to build a house, and clear a certain amount of land. Early in 1755 surveyors were sent by the company to lay out portions of the land along Lackawaxon creek, and in the Wyoming Valley. Accordingly, a settlement was made that year at Coshotunk near the Delaware, but a letter from the Earl of Egremont, founded on representations of the governor of Pennsylvania alleging that the settlement would occasion an Indian war, stopped further progress till 1760. About this time a large part of the 10,000 square miles had been surveyed, a few townships laid out, as well as mills and cabins built. Two years later several of the members of the company went in person, and commenced a settlement just below Wilkesbarre. In October of that year it was destroyed by the Indians.

As if just aware of the fact that some collisions between Pennsylvania and Connecticut settlers had taken place, the governor of the latter colony, in 1762, issued a proclamation against the intrusion of its inhabitants into Pennsylvania.¹

¹ In 1760 the proprietors had requested the secretary of state to direct the governor of Connecticut to stop the intrusion of his people, in order to quiet the complaints of the Indians, which were occasioned by trespasses committed on lands set apart for them by recent treaties. But he thought the Connecticut purchase of 1754 had been fairly made, and therefore that they should obtain the attorney-general's opinion. The Penns assured him to the contrary. Thereupon he referred the matter to Sir William Johnson. P. L. B., vi, T. P. to Hamilton, Dec. 10, 1760.

The complaints aroused by these quarrels and petty disturbances caused Sir William Johnson to write to the Board of Trade that he feared their injurious influence on the Indians. This led the king, in October, 1763, to direct that the contending colonies should each appoint commissioners to go to Wyoming and proclaim his commands that the intruders should depart and abandon their enterprise. The execution of the order was prevented by the outbreak of Pontiac's war. During its continuance the operations of the Susquehanna Company ceased. But it was not easily dismayed, and while preparing to send a large number of settlers, dispatched Col. Eliphalet Dyer with a petition to the king. While Dyer was still in England, and in defiance of the royal proclamation, the company resolved to have five townships, each five miles square, surveyed, and to grant each of these to forty settlers, on condition that they would remain on the ground and defend their claims against invasion. These townships were subdivided into sections of 400 acres, three of such sections being reserved for the ministry and schools. Though there had been a steady influx of settlers from Connecticut for fifteen years, the fact did not become very noticeable till 1769, at which time a stockade was erected and called "Forty Fort."

All these proceedings had been carefully observed by the Pennsylvania authorities. In 1754, Gov. Morris stated that, as some of the Connecticut people had persuaded a few frontier settlers to join them, he believed more vigorous measures than writing to governors and magistrates should be employed. He suggested that the women and children should be seized and sent back to Connecticut, but the men should be imprisoned for a brief period as a warning to others. "I don't doubt," said he, "that Connecticut will amuse and give good words till a great number be settled, and then bid defiance."² His view was not at first concurred in by the proprietors, because they believed the whole scheme to be merely the crea-

¹ Trumbull, p. 471; Hoyt, pp. 19-20.

² Hoyt, p. 18.

tion of some speculators and likely to fail. Indeed, they even favored such a settlement as a protection against the French, provided the Indians were not disturbed and that the settlers took their titles from Pennsylvania.¹ The governors of that province however realized the danger, issued several proclamations against the intruders, and sent letters to the Connecticut authorities setting forth the tendencies of such an illegal method of settlement.²

At length the proprietors awoke to the situation and leased for seven years to certain individuals 100 acres each within the disputed section, on condition that they would duly defend their property. In January, 1769, the lessees took possession of the blockhouse and cabins left by the massacred settlers in 1763, and laid out for the proprietors the manors of Stoke and Sunbury on the west bank of the Susquehanna, right in the heart of the valley.³ Previous to this time it is somewhat doubtful whether any land within the disputed region was held by settlers under grants from the Penns, whereas we have seen that under sanction of the company a number of settlers had already taken up claims.⁴ From the standpoint of possession, then, the balance is slightly in favor of the Connecticut claimants. The proprietors continued to offer special inducements to people who would hold their possessions against the Connecticut trespassers.⁵ The company in turn made very advantageous offers, so that many of the Pennsylvania settlers found it profitable to take titles from Connecticut.

Now begins that civil strife in miniature known as the

¹ Penn MSS., T. P. to Peters, Apr. 14, 1754.

² *Pa. Col. Rec.*, v, pp. 768, 774, 777; vi, pp. 255, 275.

³ For this reason, among others, many of the neighboring settlers sympathized with the Connecticut people.

⁴ Gov. John Penn, in his conference with the Connecticut commissioners in 1773, asserted that for many years land had been granted within the limits claimed by Connecticut. *Conn. Col. Rec.*, xiv, p. 475. But see Hoyt, p. 27.

⁵ P. L. B., ix, T. P. to John Penn, May 9, 1769.

"Pennamite and Yankee War." In February, 1769, the first "forty" Connecticut settlers arrived, and besieged the garrison in the Wilkesbarre blockhouse. When three of their leaders had been invited into the fort for conference, they were seized and sent to Easton. Here they were speedily bailed out, and returned to Wyoming. Then the "Forty Fort" was stormed by the sheriff and a posse from Northampton County, and the garrison treated as before. In April another detachment arrived and erected a fort. Again the sheriff with difficulty secured a posse, for most of the people in that region sympathized with the newcomers, and the same thing happened.

In 1770 the attention of the Board of Trade was called to these disturbances. In its report thereon, the Board condemned the outrages committed by both parties, but decided that the matter lay within the jurisdiction of Pennsylvania. The report, however, was caused by the fact that the persons employed by the company, when summoned before the Board, deprecated any violence and stated that they had had no instructions to defend the proceedings of the settlers, or to represent them as sanctioned by the government of their colony.¹ Thereupon the proprietors directed Gov. Penn legally to eject the intruders, or to receive them as tenants; but in event of an expensive contest, they intended to try their legal right by appeal to England.² But the futility of this scheme of receiving the invaders as tenants was too obvious to merit serious consideration. Emissaries from Connecticut busied themselves in stirring up the people against the jurisdiction of the proprietors, going so far that the Pennsylvania assembly in 1771 passed the riot act, with resolutions strongly condemning their actions, and offering a reward for their ap-

¹ Penn MSS., *The Wyoming Controversy*, Report of a committee of the Board of Trade, July, 1770.

² P. L. B., x, T. P. to Tilghman, Feb. 26 and March 27, 1770; to Fell, Feb. 7, 1770; to Richard Penn, July 24, 1770; to Wilmot, July 29, 1770; Penn MSS., *Private Correspondence*, v, Richard Penn to T. P., July 26, 1770.

prehension; in accordance with which the governor issued another proclamation.¹ But the struggle continued with unabated vigor.² Forts and blockhouses were built, besieged, and captured. Pennsylvania adherents were imprisoned in the forts of the New Englanders. Connecticut partisans were imprisoned at Philadelphia as hostages for the removal of the others, and prosecutions were commenced against the frontier settlers in order to prevent them from joining the intruders.³

The proprietors then petitioned the king in 1771 to have the boundary between Pennsylvania and Connecticut determined, but the Board of Trade adhered to its previous opinion.⁴ The president of the council in Pennsylvania wrote to Gov. Trumbull of Connecticut, inquiring by whose authority such violent measures were employed. He replied that the persons concerned had had no orders from himself or the General Court, and that he was sure the Court would not countenance any violence in vindicating the rights of the Susquehanna Company.⁵ The Pennsylvania assembly refused to have anything further to do with the disturbances, claiming that it did not affect the general government.⁶ Not long after this, in a conflict of arms, the Pennsylvania contingent was defeated and compelled to surrender.⁷ Pennsylvania temporarily desisted from the struggle; but the inhabitants of Wyoming continued to extend their settlements, laid out townships, erected fortifi-

¹ Penn MSS., *Private Correspondence*, v, Richard Penn to T. P., May 29, 1771.

² For the details see *Pa. Col. Rec.*, ix, and *Pa. Arch.*, 1st series, iv, *passim*; Miner, *History of Wyoming*, pp. 102-182; Pearce, *Annals of Luzerne County*, pp. 58-119.

³ P. L. B., x, Proprietors to Tilghman, Jan. 28, 1771.

⁴ P. L. B. x, Wilnot to John Penn, Dec. 12, 1771.

⁵ Hoyt, p. 22.

⁶ *Pa. Col. Rec.*, ix, pp. 680-7; Penn MSS., *Offic. Corresp.*, xi, R. Hockley to T. P., Feb. 29, 1772.

⁷ The articles of capitulation ran as follows: A certain number of armed men should depart unmolested; men with families might remain two weeks to remove their effects; and the sick and wounded should be allowed proper attention. Penn MSS., *The Wyoming Controversy*.

cations, levied and collected taxes, passed laws, and established a militia.

Meanwhile the General Court of Connecticut had appointed a committee to search for all evidences of title, and had sent to its agents in England all such evidences to be embodied in a statement which should be presented to the crown lawyers. We have seen what was their decision respecting the charter. Relying on their further opinion that, if the governor and company of Connecticut thought it prudent or expedient to make such a claim, it would be proper for them to apply to the king to appoint commissioners in America for the purpose of settling the matter, the Connecticut legislature, in October, 1773, resolved that it would support the claims of the colony under its charter. Thereupon commissioners were appointed to treat with Gov. Penn, and were instructed to join with him in an application to the crown for the appointment of commissioners to decide the controversy, or with him to agree upon measures to preserve order among the inhabitants.¹ A conference was thereupon held at Philadelphia in December, 1773. Gov. Penn, acting in the behalf of the proprietors, refused to join in an application to the crown, lest he should thereby admit the Connecticut claim, though he stated that the proprietors would readily answer any application which Connecticut separately might choose to make. The commissioners from that colony rehearsed all its pretensions by charter, Indian purchase and possession; and to facilitate the exercise of jurisdiction, proposed that the settlers from each colony should, until the dispute could be decided, register their names separately at an office erected for the purpose. They dwelt upon the delay and expense incident to a decision by the Privy Council, and believed that the affair could be best settled by agreement, or by reference to arbitrators from neighboring colonies. At any rate they desired a temporary line of jurisdiction to be established. Gov. Penn replied to their arguments,

¹*Conn. Col. Rec.*, xiii, pp. 366, 427, 518; xiv, pp. 161-2.

dilating particularly on the failure of Connecticut for ninety-two years to assert its claim. He stated that, as the disputed territory had been recently erected into a county, no temporary line could be run. He asserted, also, that the disturbances could not cease till the Connecticut people had left the region, and the case had been legally decided. The Connecticut commissioners answered that the acquiescence of Connecticut with regard to the Pennsylvania grant had no more weight than the acquiescence of Pennsylvania in the Connecticut grant. The negotiations, however, proved fruitless.¹

In January, 1774, the Connecticut legislature resolved that its agents in England should be instructed to prosecute the colony's claim. In answer to an application from the people at Wyoming, it also incorporated the town of Westmoreland with the following boundaries: east by the Delaware, north by the northern line of Connecticut, west by a north and south line drawn fifteen miles west of the valley, and south by the southern line of Connecticut. Though annexed to Litchfield County, Connecticut, the town was given practical autonomy.² At the same session the General Court enacted that suitable persons should be employed to ascertain the northern and southern boundaries of Connecticut, and the governor was desired to issue a proclamation forbidding any persons to settle any land in Wyoming without the consent of the General Court. In answer to this Gov. Penn of Pennsylvania, February 28, 1774, commanded that no regard should be paid to orders given by any person presuming to act by virtue of instructions from the authorities of Connecticut.³ Thereupon, in May, 1774, the Connecticut General Court resolved to petition the king to determine the boundaries, and the proprietors in turn asked the crown to render an opinion against this

¹ *Conn. Col. Rec.*, xiv, p. 465 *et seq.* *Pa. Col. Rec.*, x, pp. 111, 118-128, 153.

² *Ibid.*, xiv, p. 218.

³ *Pa. Col. Rec.*, x, p. 153.

petition, lest by any attempt to decide the boundaries the claim of Connecticut might be admitted.¹

In response to this request of the proprietors, and for the purpose of examining the case preparatory to the issue of such an opinion, the Board of Trade summoned before it the Connecticut agents. But because American affairs had become so threatening, that action upon the petition was deferred till the proprietors gave up in despair. At one time war between the two colonies seemed inevitable. In December 1775, Col. Plunkett of Northumberland county, in which the Wyoming Valley was largely situated, with about five hundred men, acting under orders from Gov. Penn, endeavored to drive out the settlers. About three hundred of them at Nanticoke repulsed him, with considerable loss on both sides. Then Congress interfered with a resolution that the contending parties should cease hostilities until the dispute could be legally settled.

Soon after the surrender of Cornwallis the supreme executive council of Pennsylvania, in accordance with the ninth article of the constitution of 1781, petitioned Congress to establish a court to determine the matter. Congress complied, and August 28, 1782, appointed seven commissioners, five of whom, November 19, organized the court at Trenton. On the thirtieth of the following December, they decided that the state of Connecticut had no right to the lands, and that the preëmption and jurisdiction of the territory belonged to Pennsylvania.² Connecticut acquiesced in the decision, and in 1800 renounced by legislative act all territorial and jurisdictional claims to any section of country west of the eastern boundary of New York.³

¹ *Conn. Col. Rec.*, xiv, p. 262; Penn MSS., *Offic. Corresp.*, xi, Wilmot to John Penn, Aug. 11, 1774.

² *Pa. Arch.*, 1st series, ix, pp. 679-725.

³ Hoyt, pp. 47-48.

III

Virginia.

In 1749 George II was induced to grant 500,000 acres of land on the branches of the Ohio to an organization known as the Ohio Company, most of whose members were residents of Virginia. The purpose of the grant was to establish a settlement as a barrier for the colonies against the French, and as a means of monopolizing the trade of the western Indians.¹ Since Virginia by the charter of 1609 had a somewhat indefinite claim to all lands west and northwest of her coast line, and extending to the Pacific, and in order to prevent such difficulties as might arise from the settling of large tracts west of the mountains, the proprietors at once tried to obtain a royal order for the running of the boundary line between Virginia and Pennsylvania,² but their effort failed. Thereupon they made an agreement with members of the Ohio Company in England that they would instruct the governor of Pennsylvania to enter into any reasonable measures to assist the governor of Virginia in building a fort on the Ohio, with the stipulation that the latter would give assurance that the settlement thus made should not be prejudicial to the rights of the proprietors in that region, and that *bona fide* settlers should be secured in their tenure. In case any of the company's land fell within the limits of Pennsylvania, it was agreed that it should be held of the Penns. In turn the proprietors promised that in case the settlements of the company did extend into Pennsylvania, they would grant the land free of quit rent for seven years or more, provided that it should not be held for speculation; and ex-

¹ P. L. B. iii, T. P. to Hamilton, Aug. 27, 1750, *Col. Rec.*, v, p. 423.

² Penn MSS., *Offic. Corresp.* iii, J. Hamilton to T. P., Jan. 2, 1749; R. Peters to T. P., May 16, 1749; *Ibid.*, *Supp. Proc.*, T. P. to Peters, Aug. 2, 1749.

pressed their willingness to furnish suitable munitions for blockhouses and other fortifications.¹

For the purpose of checking the encroachments of the French, it was determined in 1754 to build a fort on the site of the present city of Pittsburgh. Hence Gov. Dinwiddie of Virginia issued a proclamation, February 19, 1754, offering as an encouragement to volunteers, 300,000 acres on the east side of the Ohio, one-half of which was to adjoin the fort, and the other half was to lie on or near the Ohio. These lands were to be divided among the volunteers in order of merit at the completion of their term of service, and to be granted free of quit-rent for fifteen years. The proposition having been transmitted to Gov. Hamilton of Pennsylvania, that officer answered, March 13, 1754, that he believed the fort and lands were within Pennsylvania,² and in behalf of the proprietors offered the territory on the same conditions. He asked Dinwiddie for an acknowledgment of the proprietors' rights. Dinwiddie replied that the Virginia surveyors did not consider that the forks of the Monongahela lay within the grant to the Penns; but he agreed to send a request to England to have the boundaries ascertained. If the territory was within Pennsylvania, however, he thought it reasonable that the quit-rent should be paid to the proprietors, at the expiration of the specified fifteen years. As the fort was later captured by the French, the military grant never took place, but various settlements were made by permission of Virginia.³

The Penns desired to avoid giving the people of Virginia any reasonable cause for dissatisfaction. But at the same time they feared that the Virginians might get control of the trade on the Ohio, and through that be led to form just such settlements there. Hence they directed Gov. Hamilton to secure it,

¹ P. L. B., iii, T. P. to Hamilton, March 9, 1752, and iv, to Peters, Aug. 13, 1755; Penn MSS., *Supp. Proc.*, T. P. to Peters, May 31, 1754.

² Cf. *Col. Rec.* v, pp. 423-4, 758-62. ³ Smith, *Laws of Pa.*, ii, pp. 130-2.

so far as that could be done without passing beyond the limits of the province. But as the western boundary had never been accurately surveyed, if surveyed at all, and as therefore its location was not definitely known, this injunction amounted to little. The Virginians made a formal treaty for trade with the Indians, though their declared intention was not to prevent them from trading with the other provinces. The proprietors feared lest the purchases of the company might become too extensive, since by building a fort and making other preparations it had shown a purpose vigorously to push colonization. But it was not until about 1770 that the government of Virginia began to take an active interest in its colony on the Ohio. The idea was then advanced that a new province in that region would promote British interests. The proprietors in turn began to take active measures to have large tracts surveyed there, as well as to have the boundary lines run. But the settlers in that region were still so few that there seemed to be no immediate danger of a collision. Soon after, however, as the people commenced flocking in, disputes began between settlers from the two provinces. Thereupon the Penns petitioned the king, in April, 1773, to fix the western limits.¹ Lord Dunmore, governor of Virginia, then came forward with a denial that Pittsburg was within the limits of Pennsylvania.² This he based on the fact that at the request of Dinwiddie in 1754 Virginia had built forts on the Ohio. As the Pennsylvania assembly did not contribute toward the building of these forts, the plea was urged that it did not consider the territory on which the forts were located to be included within the bounds of

¹In 1772, a grant similar to that to the Ohio Company was made to an organization of which Franklin was a prominent member. Franklin, *Works*, III, p. 69, *et seq.*; IV, p. 233, *et seq.*, 302-374; VII, pp. 355-6.

²Dunmore seems to have been actuated by a desire to arouse Virginia in opposition to Pennsylvania, with a view to its possible effect on the approaching conflict between the colonies and the mother country. Indeed, for this purpose he spent some time at Pittsburgh. *New York Col. Doc.*, viii, p. 209.

that province. In assertion of this claim the Virginia government assumed jurisdiction at Fort Pitt. Commissioners were sent from Pennsylvania to Virginia to induce Dunmore to join in applying to the crown for directions to run the line, and in the meantime to establish a temporary limit of jurisdiction, since by reason of the dispute about Fort Pitt the county of Westmoreland on the Pennsylvania frontier had been thrown into confusion. To the latter request Dunmore refused to accede, while to the former he would agree only on condition that Virginia should bear no part of the expense. Therefore, when a number of discontented settlers applied to him for protection, he assumed control over most of Westmoreland county, thus extending his jurisdiction over territory some of which lay fifty miles within the limits of Pennsylvania. He placed in command a man named Connolly, who arbitrarily seized a number of the county magistrates and sent them to Virginia, but upon the protest of Governor Penn they were released.¹

Dunmore ordered Fort Pitt to be rebuilt, though Dartmouth, the secretary of state, subsequently required its destruction lest its existence might needlessly offend the Indians. Dunmore then issued a proclamation,² April 25, 1774, commanding the officers and militia at Fort Pitt to repel any insult offered by the Pennsylvania government, and enjoining the inhabitants to pay quit-rent to the king.³ Lands were freely granted by the Virginia officials, and persons holding land presumably under the Pennsylvania title were in some cases dispossessed. It is not unlikely, however, that the excesses committed were

¹ Penn MSS., *Offic. Corresp.*, xi, Tilghman to Wilmot, July 18, 1774.

² *Pa. Arch.*, 1st series, iv, p. 490.

³ At the time the bill for settling the boundaries of Canada was before parliament, the proprietors feared that these boundaries might be extended as far south as the Ohio. This would have cut off a large part of Pennsylvania. To their relief, however, a clause was inserted, providing that the boundaries of Canada should not affect any rights by charter, or any lands already granted. P. L. B., x, T. P. to Tilghman, June 16, 1774.

due more to petty feuds among the settlers themselves than to any direct acts of violence countenanced by the Virginia authorities.

In order to quiet these disturbances along the frontier, the Board of Trade ordered commissioners to be appointed to settle the boundaries, in which act it was desired that the adjoining colonies should concur. In reply to the plea of the representatives from Pennsylvania for a temporary line of jurisdiction, Dunmore stated that the proprietors had not duly supported their claims against the French. Moreover, he believed that the words of the charter did not mean, as the Pennsylvania commissioners insisted, that the western boundary line should follow in general the winding and turning of the Delaware, but that a meridian line should be drawn five degrees west of that river, from the northern limit of the province to the Mason and Dixon boundary on the south.¹ He reminded them at the same time that he was acting for the king. But the negotiations proved fruitless, each party accusing the other of faithlessness and dishonesty.²

In June, 1775, the Board of Trade revived the petition of the proprietors that the northern and western boundaries of the province might be settled. After it had considered the negotiations of the Pennsylvania commissioners with Dunmore, it expressed the opinion that a line of temporary jurisdiction should be drawn due north from the mouth of Redstone creek to the Ohio. It was disposed, however, to question the title of the Penns to the land in the vicinity of Fort Pitt, on account of their failure to provide for its defence. At the hearing before the Board it was answered that whatever might be the opinion of the Board on this point at a time

¹ The opinion of the proprietors evidently changed during the three years subsequent to 1771, because at that time they certainly favored a straight line as the western boundary of Pennsylvania. P. L. B., x, T. P. to Tilghman, Feb. 26, 1770; Wilmot to John Penn, Dec. 12, 1771.

² Penn MSS., *Penna. and Va.*, Dunmore to Tilghman and Allen, and *vice versa*, May, 1774.

when the situation of Fort Pitt was not ascertained, former presumption ought to give way to subsequent observation. It was urged that the Pennsylvania magistrates had exercised peaceable jurisdiction there, until driven away or imprisoned by Dunmore's officers. Therefore, the Penns thought it was unjust to put them in the position of plaintiffs, who were required to make out a title to lands against which no counter-title except force could be set up. They looked upon the Monongahela as a natural boundary about which the ingenuity of commissioners could not raise objections, as would be the case if a temporary line was run. Finding that the Board did not favor this proposition, they offered to fix the Yohiogany river as a temporary boundary. This would still have included Fort Pitt within Pennsylvania, a fact that the Board was unwilling to allow. Hence the matter was postponed; but on account of the outbreak of the colonial revolt no further action was taken.¹ During the progress of the Revolution Virginia proposed that, in order to complete Pennsylvania's southern boundary, the Mason and Dixon line should be extended due west from the Delaware through five degrees of longitude, and that from the western extremity of this line another should be drawn due north to the northern limits of the state. These propositions were finally ratified in an agreement between the two states, dated April 11, 1784.²

IV

New York.

THE locating of 43° north latitude caused some controversy with New York. As early as 1738 the attention of the Board of Trade had been called to the probability of disputes among the inhabitants on the border, when territory in that region should be settled.³ Thirteen years later, in answer to the

¹ P. L. B., x, Juliana Penn to John Penn, April 15, 1775; Penn MSS., *Penna. and Va.*

² Smith, *Laws of Pa.*, ii, p. 132.

³ *N. Y. Col. Doc.*, vi, p. 125.

Board of Trade's letter of that date desiring information concerning the boundaries of the several colonies, Gov. Hamilton of Pennsylvania stated that that province was bounded on the north by New York and a part of Lake Ontario, of Lake Erie, and of the country possessed by the Six Nations. This would make 43° fall about 40 miles north of Albany.¹ The governor of New York naturally interposed vigorous objections to such an opinion, and soon after granted a warrant of survey to Sir William Johnson and others for a huge tract of land on the eastern branch of the Susquehanna. Hamilton, believing that this territory was within the boundary of Pennsylvania as outlined by the royal charter, requested Gov. Clinton to inform the warrantee that the proprietors preferred to have the northern boundary settled, but, if in any event the land should be surveyed, he desired that the proprietary officers might enter a caveat against the granting of any patent therefor. The proprietors then petitioned the king to order that the boundaries should be determined. Receiving no definite response, they told the Board of Trade that several of the inhabitants of New York had attempted to procure grants from the Indians, or patents from the governor of that province for lands within Pennsylvania territory, not for the purpose of settlement, but merely for speculation.² The Board, however, did not see fit to take any steps in the matter.

Knowing that the authorities of New York expected to fix the northern boundary of Pennsylvania at 42° north latitude, the proprietors in 1755 hinted to Robert H. Morris, governor of the latter province, that, when a purchase should be made from the Indians, it would be advisable to have the northern boundary of Pennsylvania extended without mention of any particular degree, lest thereby they should lose any

¹ At the same time he wrote to Gov. Clinton, of New York, that he believed 43° was not much south of the latitude of Albany. This shows how vague were the ideas of latitude and longitude. *Ibid.*, p. 748; Hoyt, *Syllabus*, etc., p. 40.

² P. L. B., iii, T. P. to Peters, Oct. 27, 1752; to Halifax, Aug. 14, 1753.

part of the three degrees intended by the royal charter.¹ This plan seems to have been followed in subsequent purchases, in 1758 and 1768.² Occasionally grants of land within territory claimed by the Penns were made by the governor of New York. Against this practice they petitioned the king in 1773, and again in 1775. In the latter year, at the suggestion of the Board of Trade, commissioners appointed by the governors of both provinces selected a stone on an island in the Delaware River, from which the northern boundary of Pennsylvania should be determined.³

After the Revolution commissioners were again appointed, March 31, 1785, to ascertain the northern line; but the line they ran in 1787 terminated a few miles south of Lake Erie. Considerable dissatisfaction resulted, for local surveyors had fixed a line several miles north of that of the commissioners. Hence in October 1788, by permission of Congress, the Pennsylvania assembly authorized the supreme executive council of the state to purchase the Indian title to the territory included between the lines; and the following year the Indians ceded the region as far north as Lake Erie. This, agreeably to the cession from New York and Massachusetts to the United States, was bounded on the east by the west line of New York. The line as fixed at 42° was ratified by both states, September 29, 1789.⁴

¹ We have seen in the discussion of the Maryland dispute that the parallels 40° and 43° were regarded as beginning the fortieth and forty-third degrees. This being the case, the proprietors by charter would be entitled, according to the limited geographical knowledge of 1681, to all territory as far as about fifteen miles north of the present city of Binghamton. Properly speaking, however, the parallel 42° begins the forty-third degree.

² *Pa. Arch.*, 1st series, ii, pp. 370-1; Smith, *Laws of Pa.*, ii, p. 122.

³ Penn MSS., *Penna. and Va.*, Petition of Thomas and John Penn, March, 1773, and February, 1775; and Board of Trade Report, June 1, 1775; *Ibid.*, *Offic. Corresp.*, xi, J. P. to Wilmot, Jan. 30, 1775.

⁴ Smith, *Laws of Pa.*, ii, p. 130.

